

Applicant Details

First Name	Rebecca		
Last Name	Alch		
Citizenship Status	U. S. Citizen		
Email Address	rebecca.alch.2022@lawmail.usc.edu		
Address	<table> <tr> <th>Address</th> </tr> <tr> <td> Street 2468 Glencoe Avenue City Venice State/Territory California Zip 90291 Country United States </td> </tr> </table>	Address	Street 2468 Glencoe Avenue City Venice State/Territory California Zip 90291 Country United States
Address			
Street 2468 Glencoe Avenue City Venice State/Territory California Zip 90291 Country United States			
Contact Phone Number	8189121006		

Applicant Education

BA/BS From	University of California-Los Angeles
Date of BA/BS	June 2019
JD/LLB From	University of Southern California Law School
	http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=90513&yr=2009
Date of JD/LLB	May 13, 2022
Class Rank	Not yet ranked
Does the law school have a Law Review/Journal?	Yes
Law Review/Journal	No
Moot Court Experience	Yes
Moot Court Name(s)	Hale Moot Court

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Tolson, Franita
ftolson@usc.edu
Lonergan, Rebecca
rlonergan@law.usc.edu
213-740-5599
Haddad, Mark
markhadd@usc.edu
Pastore, Clare
cpastore@law.usc.edu
213-821-4410

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Rebecca Alch

2468 Glencoe Avenue Venice, CA 90291 ♦ (818) 912-1006 ♦ Rebecca.alch.2022@lawmail.usc.edu

March 23, 2022

The Honorable Judge Lewis J. Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
Courtroom 15C
New York, NY 10007-1312

Dear Judge Liman:

I write to apply for a clerkship in your chambers for the 2024-2025 term. I am a third-year law student at the University of Southern California Gould School of Law, where I rank in the top 20 percent of my class and am the President of the Student Bar Association (“SBA”).

In law school, I have excelled at written and oral advocacy. Currently, I am an Editor for the Hale Moot Court Honors Program after winning Runner-Up Best Brief and becoming an Oral Argument Finalist in last year’s program. This semester, I am in Advanced Moot Court and competing in the ABA National Appellate Advocacy Competition. My co-counsel and I were champions in the regional competition and will compete in the national competition this April.

Further, I have enjoyed taking on leadership roles and working in a team. In addition to currently serving as SBA President, I served as 1L Representative during my first year of law school and 2L President during my second. As 2L President, I was the student representative on the search committee that hired Gould’s first Dean of Diversity, Equity, and Inclusion. Presently, my 37-person team and I represent the entire law school and advocate on students’ behalf to faculty and administration. Having worked closely with and mentored law students of all class years, I am well-prepared and would be eager to collaborate with other clerks and mentor externs to support the work of the court.

My judicial externship in the Eastern District of New York was the most formative experience I’ve had while in law school. It allowed me to sharpen my legal skills and channel my intellectual curiosity into important work, and led me to take USC’s intensive small-group seminar on Judicial Opinion Writing last Fall. Now, with a more developed skillset and a clearer understanding of the clerk’s role, I am excited to return to chambers. I believe that my strong research and writing abilities, my focus and efficiency, and my positive attitude would make me an asset to your chambers, and I would deeply value the privilege of assisting the court.

My resume, writing sample, and letters of recommendation are attached for your review. I am available for an interview at your convenience and can be reached at (818) 912-1006. Thank you for your consideration.

Respectfully,



Rebecca “Beckie” Alch

Rebecca Alch

2468 Glencoe Avenue Venice, CA 90291 ♦ (818) 912-1006 ♦ Rebecca.alch.2022@lawmail.usc.edu

EDUCATION

University of Southern California Gould School of Law

Juris Doctor Candidate, May 2022

GPA: 3.80

Activities: Student Bar Association, President (2021-22); 2L President (2020-21)
ABA Nat'l Appellate Advocacy Competition, Participant (*in progress*, 2021-22)
Hale Moot Court Honors Program, Editor (2021-22)
LLM Writing Fellow (Spring 2021 & 2022)
Hale Moot Court Honors Program, Participant (Best Brief Runner-Up & Oral Argument Finalist) (2020-21)

University of California, Los Angeles

Bachelor of Arts, *summa cum laude*, English & Philosophy, June 2019

GPA: 3.96

Honors: Phi Beta Kappa (inducted Spring 2019), Regents Scholar (inducted Fall 2015)
UCLA All-Academic Team (2017), Dean's List (11 quarters)

Activities: UCLA Cross Country/Track & Field Team (2016-2018)

EXPERIENCE

Jones Day

New York, New York

Summer Associate

May 2021-August 2021

- Drafted research memoranda on several topics, including standards for certification of FLSA collective actions; the CFTC subcommittee's recommendation for the transition from LIBOR to SOFR for interest rate swaps and the potential APA implications; judge analytics on class certification motions, and; application of the *Noerr-Pennington* doctrine outside of the antitrust context.

USC Gould

Los Angeles, CA

Research Assistant to Professor Clare Pastore

May 2020-May 2021

- Conducted research and drafted memoranda on legal ethics questions and on government approaches to poverty and access to justice issues.

Eastern District of New York, District Court

Brooklyn, NY

Extern to Judge Kiyo A. Matsumoto

Summer 2020

- Researched and drafted full-length decisions on Social Security appeals, motions for summary judgment, and motions for default judgment.
- Participated in hearings, status conferences, and pre-motion conferences.

Shenkman & Hughes

Windsor Hills, CA; Malibu, CA

Intern

Summer 2017, 2018, & 2019

- Wrote pre-suit demand letters to California cities and special districts that were implementing at-large voting systems in violation of the California Voting Rights Act.
- Drafted a motion to invalidate individual settlement agreements in a class action case; a mediation brief; requests for admissions and production, and; replies to special interrogatories.

Law Offices of Milton C. Grimes

Windsor Hills, CA

Intern

Summer 2017

- Drafted a successful Pitchess motion for a criminal defense case. For this purpose, interviewed the client, audited video recordings of the relevant incident, and researched case law on probable cause.

INTERESTS

Surfing, roller skating, playing soccer, camping at state and national parks, and propagating houseplants.

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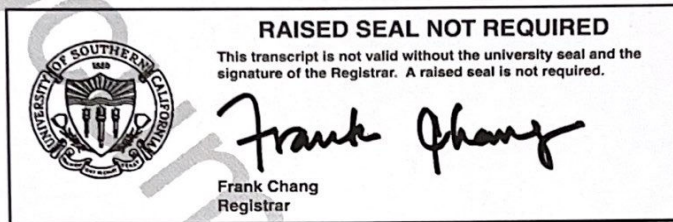
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CONSENT OF THE STUDENT IS PROHIBITED

STUDENT NAME	STUDENT NUMBER	DATE	PAGE
Alch, Rebecca, S.	5479-5566-07	03-23-2022	1 of 3

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CONTROL #: 000002323291



Current Program of Study
Law

02/27/2019 Juris Doctor

USC Cumulative Totals

Law Units Attempted: 77.0 Earned: 77.0 Available: 77.0 GPA Units: 44.0 Grade Points: 167.30 GPA: 3.80

Fall Semester 2019 (08-26-2019 to 12-18-2019)

LAW-530	CR	1.0	Fundamental Business Principles
LAW-515	4.2	3.0	Legal Research, Writing, and Advocacy I
LAW-509	3.4	4.0	Torts I
LAW-503	3.3	4.0	Contracts
LAW-502	3.5	4.0	Procedure I

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
16.0	16.0	15.0	53.40	3.56

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Spring Semester 2020 (01-13-2020 to 05-15-2020)

Grades of Credit/No Credit were required in Spring 2020 in response to COVID-19 global pandemic.

LAW-531	CR	3.0	Ethical Issues for Public Interest, Government and Criminal Lawyers
LAW-516	CR	2.0	Legal Research, Writing, and Advocacy II
LAW-508	CR	3.0	Constitutional Law: Structure
LAW-507	CR	4.0	Property
LAW-504	CR	3.0	Criminal Law

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
15.0	15.0	0	0	0.00

Summer Semester 2020 (05-20-2020 to 08-11-2020)

LAW-790	CR	1.0	Legal Externship
LAW-781	CR	4.0	Externship I

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
5.0	5.0	0	0	0.00

Fall Semester 2020 (08-17-2020 to 12-16-2020)

LAW-746	3.6	3.0	Critical Race Theory
LAW-829	3.5	2.0	Cross-Cultural Dispute Resolution
LAW-777	4.0	4.0	Administrative Law and Regulatory Policy
LAW-532	4.0	3.0	Constitutional Law: Rights
LAW-667	4.2	2.0	Hale Moot Court Brief

Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA
14.0	14.0	14.0	54.20	3.87

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Spring Semester 2021 (01-11-2021 to 05-14-2021)				
LAW-757	4.2	3.0	Sex, Gender and the Law	
LAW-608	3.8	4.0	Evidence	
LAW-870	CR	2.0	Legal Writing Fellows	
LAW-623	CR	3.0	Family Law	
LAW-668	CR	1.0	Hale Moot Court Oral Advocacy	
Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA *
13.0	13.0	7.0	27.80	3.97
Fall Semester 2021 (08-23-2021 to 12-15-2021)				
LAW-873	4.0	3.0	Judicial Opinion Writing	
LAW-763	4.1	3.0	Federal Courts: The Federal System II	
LAW-738	3.8	2.0	E-Discovery Law	
LAW-669	CR	3.0	Moot Court Supervision	
LAW-607	CR	3.0	Gifts, Wills, and Trusts	
Term Units Attempted	Term Units Earned	Term GPA Units	Term Grade Points	Term GPA *
14.0	14.0	8.0	31.90	3.98
End of Transcript				

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1105 Murphy Hall
405 Hilgard Ave
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Telephone: 310-825-1091
School Web Page: <http://www.registrar.ucla.edu/>
Accreditation: Western Association of Schools and Colleges, Comm for Senior Colleges & Universities (WASC-ACSCU)

Student Information

Student Name: ALCH, REBECCA S
Numeric Identifier: 004608344
Student Email: alch@usc.edu

Receiver Information

BECKIE ALCH
alch@usc.edu



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UCLA ID: 004608344
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PAGE 1 OF 2

PROGRAM OF STUDY

ADMIT DATE: 09/21/2015
 COLLEGE OF LETTERS AND SCIENCE
 MAJOR: ENGLISH
 PHILOSOPHY

DEGREES | CERTIFICATES AWARDED

BACHELOR OF ARTS AWARDED JUNE 14, 2019
 IN ENGLISH
 IN PHILOSOPHY
 SUMMA CUM LAUDE

SECONDARY SCHOOL

WILLIAM HOWARD TAFT HS, JUNE 2015

UNIVERSITY REQUIREMENTS

ENTRY LEVEL WRITING SATISFIED
 AMERICAN HISTORY & INSTITUTIONS SATISFIED

CALIFORNIA RESIDENCE STATUS: RESIDENT

TRANSFER CREDIT

ADVANCED PLACEMENT 1 TERM TO 10/2015 68.0
 LOS ANGELES PIERCE COLLEGE 1 TERM TO 10/2015 9.0

FALL QUARTER 2015

MAJOR: ENGLISH

LIT IN ENGL TO 1700	ENGL 10A	5.0	20.0	A
PHILOS IN LITERATRE	PHILOS 5	5.0	20.0	A
INTR-POLITCL THEORY	POL SCI 10	5.0	20.0	A+
DEAN'S HONORS LIST				
TERM TOTAL	ATM	PSD	PTS	GPA
	15.0	15.0	60.0	4.000

WINTER QUARTER 2016

LIT-ENGL 1700-1850	ENGL 10B	5.0	20.0	A
LOGIC-1ST CRSE	PHILOS 31	5.0	20.0	A
INTRO-POLITCL PHIL	PHILOS 6	5.0	20.0	A
DEAN'S HONORS LIST				
TERM TOTAL	ATM	PSD	PTS	GPA
	15.0	15.0	60.0	4.000

SPRING QUARTER 2016

AESTHTCS&CRTCL THRY	ENGL 121	5.0	20.0	A
LIFE-CONCPTS&ISSUES	LIFESCI 15	5.0	0.0	P
INTRO-ETHICAL THRY	PHILOS 22	5.0	20.0	A
DEAN'S HONORS LIST				
TERM TOTAL	ATM	PSD	PTS	GPA
	15.0	15.0	40.0	4.000

FALL QUARTER 2016

AESTHTCS&CRTCL THRY	ENGL 120	5.0	20.0	A+
HIST-GREEK PHILOS	PHILOS 100A	4.0	16.0	A
GUILT&SLF-NIETZSCHE	PHILOS 177B	4.0	14.8	A-
DEAN'S HONORS LIST				
TERM TOTAL	ATM	PSD	PTS	GPA
	13.0	13.0	50.8	3.908

WINTER QUARTER 2017

MODERN ART	ART HIS 23	5.0	20.0	A
SHAKES-POEM&ER PLAY	ENGL 150A	5.0	20.0	A
MDVL&ERLY MDRN PHIL	PHILOS 100B	4.0	16.0	A
DEAN'S HONORS LIST				
TERM TOTAL	ATM	PSD	PTS	GPA
	14.0	14.0	56.0	4.000

SPRING QUARTER 2017

CLIMATE CHANGE	A&O SCI 1	4.0	14.8	A-
LIT-ENGL 1850-NOW	ENGL 10C	5.0	20.0	A
MYSTIC&HERTIC&WITCH	HIST 2C	5.0	20.0	A
SKEPTICSM&RATNALTY	PHILOS 21	5.0	0.0	
CLASS DROPPED - WEEK 6				
DEAN'S HONORS LIST				
TERM TOTAL	ATM	PSD	PTS	GPA
	14.0	14.0	54.8	3.914

SUMMER SESSIONS 2017

AIR POLLUTION	A&O SCI 2	4.0	14.8	A-
AIR POLLUTION LAB	A&O SCI 2L	1.0	3.7	A-
DEAN'S HONORS LIST				
TERM TOTAL	ATM	PSD	PTS	GPA
	5.0	5.0	18.5	3.700

FALL QUARTER 2017

US FICTION SINC 90S	ENGL 174C	5.0	20.0	A
PHIL OF SCI-SOC SCI	PHILOS 126	4.0	16.0	A+
RUSSELL-ON DENOTING	PHILOS C127B	4.0	14.8	A-
DEAN'S HONORS LIST				
TERM TOTAL	ATM	PSD	PTS	GPA
	13.0	13.0	50.8	3.908

WINTER QUARTER 2018

LATER MEDIEVAL LIT	ENGL 142	5.0	20.0	A
SHAKESP-LATER PLAYS	ENGL 150B	5.0	20.0	A
MEDICAL ETHICS	PHILOS 155	4.0	16.0	A
DEAN'S HONORS LIST				
TERM TOTAL	ATM	PSD	PTS	GPA
	14.0	14.0	56.0	4.000

SPRING QUARTER 2018

LONDON THEATER&KING	ENGL 184	5.0	20.0	A
MDRN PHIL-1650-1800	PHILOS 100C	4.0	16.0	A
INT PHILOSOPHY-MIND	PHILOS 7	5.0	20.0	A
DEAN'S HONORS LIST				
TERM TOTAL	ATM	PSD	PTS	GPA
	14.0	14.0	56.0	4.000

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PAGE 2 OF 2

FALL QUARTER 2018

MAJOR: ENGLISH

(NEW) PHILOSOPHY

AMER POETRY TO 1900	ENGL 167A	5.0	20.0	A
INTRGNRTNL OBLIGTNS	PHILOS 150	4.0	16.0	A
KANT	PHILOS C115	4.0	16.0	A

DEAN'S HONORS LIST

	ATM	PSD	PTS	GPA
TERM TOTAL	13.0	13.0	52.0	4.000

WINTER QUARTER 2019

LIFE IN THE UNIVRS	ASTR 5	4.0	0.0	P
CHCNO LIT 1970S-NOW	ENGL M105C	5.0	20.0	A+
PHILOS OF BIOLOGY	PHILOS 137	4.0	16.0	A+
PHILOSOPHY OF LAW	PHILOS 166	4.0	16.0	A+

DEAN'S HONORS LIST

	ATM	PSD	PTS	GPA
TERM TOTAL	17.0	17.0	52.0	4.000

SPRING QUARTER 2019

WAYS READING RACE	ENGL 100	5.0	20.0	A+
THEORY OF NOVEL	PHILOS 161	4.0	16.0	A+
TOPICS-FEM PHILOS	PHILOS M187	4.0	16.0	A

DEAN'S HONORS LIST

	ATM	PSD	PTS	GPA
TERM TOTAL	13.0	13.0	52.0	4.000

UNDERGRADUATE TOTALS

	ATM	PSD	PTS	GPA
PASS/NO PASS TOTAL	9.0	9.0	N/A	N/A
GRADED TOTAL	166.0	166.0	N/A	N/A
CUMULATIVE TOTAL	175.0	175.0	658.9	3.969

TOTAL NON-UC TRANSFER CREDIT ACCEPTED	77.0
TOTAL COMPLETED UNITS	252.0

END OF RECORD
NO ENTRIES BELOW THIS LINE

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UCLA TRANSCRIPT LEGEND

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 Los Angeles, CA 90095-1429

(310) 825-1091
transcripts@registrar.ucla.edu
<http://www.registrar.ucla.edu>

The following information is offered to aid in evaluating this student's academic record. The *UCLA General Catalog* contains more detailed information concerning courses and degree requirements. The catalog can be found on the Internet at <http://www.registrar.ucla.edu/catalog/>

DEGREE REQUIREMENTS. A minimum of 180 quarter units (120 semester units) is required for the bachelor's degree.

CREDITS. Beginning September 1966, credits are quarter units; prior to that time, credits were semester units. In 1957, UCLA switched from a 3.0 to a 4.0 point grading system.

COURSE NUMBERS. Lower division courses are numbered 1-99; upper division, 100-199; graduate, 200-299; teacher training, 300-399; professional graduate, 400-499; and individual study and research graduate, 500-599.

DEFINITION OF LETTER GRADES AND APPLICABLE GRADE POINTS

UNDER-GRADUATES	GRADE			GRADUATES
	GRADE POINTS			
Extraordinary	A+ 4.0			Superior achievement
Superior		A 4.0	A- 3.7	Superior achievement
Good	B+ 3.3	B 3.0	B- 2.7	Satisfactorily demonstrated potentiality for professorial achievement in field of study
Fair	C+ 2.3	C 2.0	C- 1.7	Passed the course but did not do work indicative of potentiality for professorial achievement in the field of study
Poor	D+ 1.3	D 1.0	D- 0.7	Not applicable for graduates
Fail		F 0.0		Fail

DEFINITION OF OTHER GRADES

GRADE	DEFINITION	COMMENTS
DR	Deferred Report	Not included in units attempted
I	Incomplete	Satisfactory work but incomplete-not included in units attempted
IP	In Progress	Multiple-term course-not included in units attempted
J	Internal Grade	Grade pending-not included in units attempted
L	Late Registration	Grade pending-not included in units attempted
NP	Not Passed	Undergraduates only
NR	No Report	Grade pending-not included in units attempted
P	Passed	Achievement of grade C or better (undergraduates)
R	Retroactive Add	Grade pending-not included in units attempted
S	Satisfactory	Achievement of grade B or better (graduates)
U	Unsatisfactory	Graduates only

GRADE-POINT AVERAGE (GPA) CALCULATION. The GPA is calculated by dividing grade points by graded units attempted. To convert quarter units to semester units, multiply by .666; to convert semester units to quarter units, multiply by 1.5.

REPETITION OF COURSES. A student may repeat only those courses for which a grade of C-, D+, D, D-, F, NP, or U is recorded, unless otherwise noted in the *UCLA General Catalog*.

EXPLANATION OF CODES

CODE	TYPE	COMMENTS
G	Grading basis	Mandatory letter grade
GO	Repeat	Full credit
GP	Repeat	Course P/NP, no credit
G1	Repeat	Units attempted and grade points only
G5	Repeat	Unapproved repeat, no credit
JD	Repeat	Removed I, repeated; units passed only
JL	Incomplete	Lapsed I
JM	Credit	No credit awarded
J1	Incomplete	Removed I, grade points allowed
J3	Incomplete	Removed I, repeated grade points allowed
J4	Repeat	Lapsed or removed I, repeated
K1	Credit	Credit by examination
L1	Credit	Deduction for duplication of credit
L2	Credit	Deduction for duplication of advanced placement
L3	Credit	Deduction for duplication of advanced standing
MG	Credit	No credit for work under dismissal- repeated course
MR	Credit	No credit for work under dismissal-subsequently repeated
MS	Miscellaneous	Refer to memoranda
M1, MP	Credit	No credit for work under dismissal
M3	Credit	Credit granted via petition
N1	Miscellaneous	Grade corrected by instructor-clerical or procedural error
PG	Repeat	Repeat of P/NP, unit credit
PJ, SJ	Incomplete	Removed I on P/NP, S/U
PL, SL	Incomplete	Lapsed I on P/NP, S/U
PN	Grading basis	P or NP or I grade
PT, ST	Multiple term	Final unit total of a multiple-term course (P, NP, S, U, I)
Q5	Miscellaneous	Retroactive add
Q8	Miscellaneous	Retroactive section change
RD	Repeat	Excluded from GPA, units passed only
RF	Repeat	Excluded from GPA, no credit
SU	Grading basis	S or U or I grade
TP, TS	Multiple term	First term(s) of a multiple-term course (P, NP, S, U)-no credit
T1, T2	Multiple term	First term, second term of multiple-term course-no credit
T3, T4	Multiple term	Third term, fourth term of multiple-term course-no credit
2T, 3T, 4T	Multiple term	Final unit total for all terms of multiple-term course

ACCREDITATION. Western Association of Schools and Colleges.

CERTIFICATION. The Seal of the University of California, the Registrar's signature, and the date.

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FRANITA TOLSON
Professor of Law
Vice Dean for Faculty and Academic Affairs

November 15, 2021

Re: Letter of Recommendation for Rebecca Alch

Your Honor:

I am pleased to write in wholehearted support of Rebecca Alch's application for a clerkship in your chambers. Rebecca was a student in my Constitutional II course in the fall of 2020. Over the course of the semester, Rebecca and I became well acquainted, which is quite the feat given that zoom teaching and quarantine complicated the semester for students and professors alike. In our class discussions, Rebecca made thoughtful and sharp critiques of the assigned readings that made her stand out among her classmates. It quickly became clear that she was extremely engaged with the material and committed to giving 100% regardless if class was on line or in person. Rebecca was willing to critically assess various doctrines, many of which have inconsistencies that render them worthy of intense critique. She was very interested in high level questions about law and legal doctrine—why a particular law exists; what morals does the law embody; what policies does the law further; how should we think about interpretive philosophies in deciding whether a law is consistent with the constitution—and so on. Rebecca spent a great deal of time trying to make sense of the caselaw, which led to many conversations about constitutional law issues after class and during group work.

Unsurprisingly, Rebecca did extremely well in my course, earning one of the top grades in the class. It is not surprising that Rebecca's dedication to learning has remained consistent over the course of her law school career because she is a terrific student and an engaged learner. In addition to having an overall G.P.A. that illustrates her consistency and focus, Rebecca also has other indicators that mark an exceptional academic career including participation in the Hale Moot Court Honors Program and, importantly, a very diverse set of work experiences that has allowed Rebecca to field test what she learned in the classroom.

Rebecca has used her time as a law student to gain legal experience in a variety of contexts. After her first year, she obtained a judicial externship that allowed her to rigorously engage with the law and legal doctrine. The externship provided Rebecca with a first-hand look at the nuts and bolts of the legal process, which is invaluable for any budding attorney. This experience, which Rebecca described to me as "the most formative and enriching opportunity" of her law school career, is what prompted her to pursue a judicial clerkship for after graduation. The externship not only exposed Rebecca to career options that she had not previously considered, but Rebecca realized that everything that a clerkship entails—analyzing and researching novel legal issues, writing and collaborating on opinions, working closely with a judge—will help her be extremely successful once she joins her firm's appellate group.

Rebecca followed her externship with a research assistant position for my colleague, Clare Pastore, who works on poverty and access to justice issues. Through this experience, Rebecca was able to further refine her research and writing skills. Indeed, her selection as an LLM Writing Fellow is a

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November 15, 2021

testament to her strength as a writer and an analytical thinker. These skills will be a huge advantage in any future clerkship.

Rebecca's time as a research assistant provided her with a different perspective on the legal system than she encountered in her externship or during her summers at Jones Day and Shenkman & Hughes, respectively. The latter opportunities exposed her to the legal work that occurs in the big and small law firm context, rounding off a law school career in which Rebecca gained first-hand experience about the wealth of post-graduation opportunities. Rebecca has had varied experiences that can only benefit her during a clerkship, especially given the diversity of cases and types of attorneys that judges encounter daily.

Rebecca's law school experience confirms that becoming a law clerk would be a natural fit for her. Indeed, her experiences both inside and outside of the classroom have strengthened her analytical skills and broadened her legal knowledge. She would be a great fit in any chambers because, in addition to her obvious intelligence, Rebecca is humble, personable, and eager to learn.

Based on her class performance, background, and personal qualities, I recommend Rebecca very highly and without reservation for a clerkship in your chambers. I would be happy to speak further about Rebecca's extensive qualifications at your convenience. Please feel free to contact me at the number or email below if you have any questions.

Sincerely,



Franita Tolson
Professor of Law
USC Gould School of Law
ftolson@law.usc.edu
747-300-2735



REBECCA S. LONERGAN
Professor of Lawyering Skills
Associate Director of Legal Writing and Advocacy

September 20, 2021

Dear Judge,

Re: Clerkship Recommendation for Rebecca Alch

I am writing to recommend Rebecca (“Beckie”) Alch for a position as a clerk in your chambers. I had the pleasure of having Beckie as a student in four of my classes during her second and third years of law school. First, based on her excellent performance in her first-year legal writing class, Beckie was chosen to be a legal writing fellow during her second year. As the Associate Director of the legal writing program, I assist the Director in overseeing the work of the writing fellows. That same year, Beckie was also invited to participate in the Hale Moot Court Honors Program, which is a year-long, intramural moot-court competition. As a participant, she was required to take two classes that I taught—an advanced writing class during the fall and an oral advocacy class during the spring. Beckie did extremely well in both classes, receiving an A+ on her appellate brief and advancing to the Final Round of the oral argument competition. During her third year of law school, Beckie was chosen to be a member of the Hale Moot Court Honors Program Executive Board and a competitor on USC’s National Moot Court team (which competes against other schools in nationwide competitions). I oversee both of those programs, so I have had frequent contact with her. Although she has not yet completed the third-year classes, to date, she has performed exceptionally well as a member of the Executive Board and as a member of the national moot court team.

Based on all of my contacts with Beckie, I know that she is intelligent, hard-working, organized, responsible, and mature. Additionally, from watching her interact with faculty and students, I know that she is always polite and professional. In short, it was a pleasure having her in my classes.

Before coming to USC as a fulltime faculty member in 2007, I was an Assistant United States Attorney in the Central District of California for seventeen years. During that time, I became familiar with the work performed by the law clerks. I am certain that Beckie will be an outstanding clerk. She knows how to thoroughly research a complex legal issue, and write a clear, concise, and complete analysis. Perhaps more important, she exercises independent judgement to make sure that whatever task she is assigned is successfully completed. If I were a judge, I would be happy to hire her.

University of Southern California
699 Exposition Boulevard, Los Angeles, California 90089-0071 • Tel: 213 740 5599 • Fax: 213 740 5502 • rlonergan@law.usc.edu



Rebecca Alch Recommendation
September 20, 2021
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Please feel free to contact me if you have any questions or concerns.

Sincerely.

A handwritten signature in cursive script, reading "Rebecca S. Loneragan".

REBECCA S. LONERGAN

March 23, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

Beckie Alch took my writing-intensive workshop, Judicial Opinion Writing (Law 873), where I got to know her as a thinker, writer, and colleague. She is smart, has good judgment, works hard, and is good-humored. And she now has significant experience drafting and improving judicial opinions. She would be an asset to your chambers, and I highly recommend her to you.

Beckie's principal writing projects were to draft and, after receiving comments, to improve a majority opinion in *United States v. Tsarnaev* and a concurring opinion in *Wooden v. United States*; the cases were then-pending in the U.S. Supreme Court. She also edited an older opinion pertinent to the *Tsarnaev* case (*Aldridge v. United States*, 283 U.S. 308 (1931)) that offered numerous opportunities for improvement.

Beckie's majority opinion in *Tsarnaev* was excellent substantively and stylistically. The issue was whether the court of appeals erred in reversing the district court's handling of voir dire for the high-profile trial of the Boston Marathon bomber. Speaking with a judicial voice that is respectful yet lively, Beckie's opinion guides the reader through the key facts and proceedings below, sets a clear framework for analyzing the question presented, and develops the legal analysis clearly and persuasively. She also acknowledges the best points on the other side and explains thoughtfully why they did not carry the day.

Her concurring opinion in *Wooden* was equally strong. In that case, involving a question of statutory construction, she concisely explains her agreement with the majority's conclusion given the facts of the case and then presents two substantial concerns about whether, on other facts, the Court's statutory construction would withstand constitutional scrutiny. Once again, her opinion is eminently readable, well-organized, earnest, and persuasive. In taking issue with one aspect of her fellow student's majority opinion, Beckie deftly identifies a weakness in reasoning without implying any disrespect for the author as a colleague.

Two other aspects of Beckie's work this past semester are notable. First, even though her first drafts were sound, she put substantial effort into her revisions. Each student distributed their opinion to the class several days before a class meeting and had the floor for 25 minutes to talk through their draft and field questions and comments. Each student also received detailed written comments from me and had the option to meet separately with me to discuss potential revisions. Beckie took maximum advantage of each opportunity to improve her work. She brainstormed constructively with other students during class and separately with me about different options, dug deeply to understand the hardest arguments on the other side, and questioned whether a particular point really added value to her opinion. Each of her final opinions reflects a considered judgment to jettison one draft subsection in favor of developing other arguments more fully. In conversation with Beckie about these choices, I saw that she readily engages with legal argument and productively assesses the pros and cons of alternatives, never letting her ego interfere with the goal of writing the best possible opinion. If I were a judge, I would want a law clerk who could engage as thoughtfully and follow up as effectively as she did.

Second, Beckie fully embraced the twin goals of the class, which were not only to write the best possible opinions oneself but to help classmates write the best opinions they could. Beckie read her classmates' work carefully and offered them good suggestions. She demonstrated to me, through her effort and good will, that she is fully ready to step into the collaborative environment of a judicial chambers and not only set the highest standards for her own written work but provide valuable assistance to others.

On a personal level, Beckie is easy-going and sincere. I urged her to apply to be a teaching assistant for me this Spring (her schedule, however, conflicted with my class); the same personal qualities that convinced me that she would be outstanding in that role also convince me that she will be outstanding as a colleague in chambers. Please do not hesitate to contact me if you have any questions.

Very truly yours,
/s/ Mark E. Haddad

Mark E. Haddad
Adjunct Lecturer in Law
USC Gould School of Law
mhaddad@law.usc.edu

Mark Haddad - markhadd@usc.edu



CLARE PASTORE
Professor of the Practice of Law

November 23, 2021

Re: Recommendation for REBECCA ALCH

Dear Judge:

It is my great pleasure to provide my most enthusiastic recommendation for Rebecca (“Beckie”) Alch for a clerkship in your chambers. Beckie is a third year student at USC Gould School of Law and was my research assistant in the Summer of 2020. She did not remain in that post for longer only because she is so sought-after: I had hoped she would continue her excellent research work for me through the school year, but her fellow students had other plans and elected her student body president. She has performed that role in her typical hyper-competent fashion, bringing together often fractious student groups and ably representing students on various faculty committees including one specifically convened to deal with pandemic policies.

Beckie is without a doubt one of the most outstanding research assistants I have ever had, which I consider high praise indeed, since I have been fortunate to employ some of USC Gould’s best students in that capacity over the years. Her research is very thorough; her writing clear, incisive, and sensitive to nuance. Her work is fully the equal of that of many junior lawyers with whom I have worked over the years. Taking into consideration that Beckie had only completed one year of law school when she worked for me, this is extraordinary.

The list of assignments Beckie completed for me is lengthy and the topics complex: she wrote detailed memos on the emergency powers of California courts in relation to the eviction process; an ethics issue involving conflicts checking and client confidentiality and another involving the potential conflict between antidiscrimination norms and attorneys’ choice of clients as exemplified in the Massachusetts *Stropnick v. Nathanson* case (19 M.D.L.R. 39 (1997)); collection and analysis of research and empirical data regarding criminal fines and fees for an amicus brief I authored in the California Supreme Court in the pending *People v. Kopp* case, and analysis of then-novel eviction moratoria in various jurisdictions and the legal challenges thereto, among other assignments. In each instance, her work was thorough, clear, concise, and extremely useful to me. She was also very efficient, regularly turning in work before deadlines.

In particular, Beckie’s work analyzing the California Supreme Court’s controversial *Dynamex West v. Superior Court* decision (4 Cal.5th 903 (2018)) and subsequent developments (the state Legislature’s codification of *Dynamex* in AB 5, the subsequent ballot initiative exempting rideshare drivers from AB 5, and litigation over that exemption) has been extremely helpful to me and to others on the California State Advisory Committee to the U.S. Commission on Civil Rights as we consider a project assessing the civil rights implications of AB 5. It is rare for me to use the



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work of a research assistant so directly, or share it with colleagues with few or no edits, but Beckie's work was consistently of a quality that made me comfortable doing so.

Beckie's performance for me was also noteworthy because she completed all of these complex projects while also externing (remotely) for Judge Kiyo Matsumoto in the U.S. District Court for the Eastern District of New York. Only an extremely capable, organized and dedicated student could manage such a heavy workload and perform at such a high level.

Beckie's outstanding work continued in her 2L summer at Jones Day in New York, as witnessed by the firm's offering her an associate position which she accepted. I have no doubt that Beckie will be an outstanding asset to the legal profession for many years to come.

Like her work for me and others, Beckie's academic record speaks both of her capability and her dedication. She graduated *summa cum laude* and *Phi Beta Kappa* from UCLA and carries a very strong GPA here at Gould. Of particular note for the demands of a clerkship, Beckie received an extremely rare 4.2 (A+) grade in her first year Legal Research and Writing class and "A" grades in both Administrative Law and Evidence. I have no doubt that her GPA would be even stronger had we had numerical grades in the spring of 2021. (Like virtually all law schools, we graded only credit/no credit for that semester as a result of the COVID disruptions). She was also extremely successful in both the oral and written portions of our Hale Moot Court Honors Program, finishing as runner-up for Best Brief and as one of the four finalists in the oral competition. Her excellent writing has also been recognized by her selection as a Legal Writing Fellow for our LLM students.

In addition to her abundant academic capabilities, Beckie is a lovely person with whom to work. She is personable, interested in and knowledgeable about many topics, and a good listener. Her election first as 2L class president and then as student body president speaks to the esteem in which her fellow students hold her, and her ability to relate to and get along with virtually everyone. I recommend her most enthusiastically for a clerkship, and I hope you will give her the opportunity to impress you as she has me.

Please do not hesitate to contact me if I can provide any further information about Beckie.

Sincerely,



Clare Pastore
Professor of the Practice of Law
USC Gould School of Law

SUPREME COURT OF THE UNITED STATES

No. 20-443

UNITED STATES, PETITIONER v. DZHOKHAR ANZOROVICH TSARNAEV

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT[December 10, 2021 – **USC LAW 873**]

JUSTICE ALCH delivered the opinion of the Court.

Respondent Dzhokhar Tsarnaev was convicted for bombing the 2013 Boston Marathon. He pleaded guilty before the United States District Court for the District of Massachusetts and received the death penalty on some but not all eligible counts. Tsarnaev appealed, citing decades-old First Circuit dicta for the proposition that the trial judge was required to ask jurors what they had heard, read, or seen about the case from pretrial publicity. The First Circuit reversed and remanded for new sentencing because the trial judge in Tsarnaev's case declined to ask such questions. We granted certiorari on the issue of whether the First Circuit erred in reversing on this ground and hold that it did.

I

In 2013, Defendant-Respondent Dzhokhar Tsarnaev and his older brother, Tamerlan Tsarnaev, set off two bombs at the finish line of the Boston Marathon, killing three and sentencing hundreds to life-altering injuries. Together, the brothers accomplished one of the worst domestic terrorist attacks since 9/11.

The brothers fled the carnage undetected, later murdering a police officer and hijacking a car (while holding its driver captive) to further their escape. Police eventually tracked down the stolen car with the brothers inside. Tamerlan engaged in a deadly face-off with police while Dzhokhar used the opportunity to escape. In the chaos, however, Dzhokhar ran over Tamerlan, who ultimately died from his injuries. Dzhokhar did not get far after that: a resident of a nearby suburb later found Dzhokhar in his boat, bleeding, and called the police. Once at the scene, police coaxed Tsarnaev's unwilling surrender through flash-bang grenades and gunfire and finally arrested him.

The bombing, the police chase, and Dzhokhar's eventual capture dominated Boston-area and national news. In the immediate aftermath of the attack, there were graphic images of the Marathon finish line, updates on the search for the brothers, messages from the Governor about sheltering in place, and photos of Dzhokhar in the bloodied boat. Following Dzhokhar's capture were stories about

the lives of those who died and predictions about the future testimony of those who survived. Meanwhile, prominent community members publicly considered punishments for the crime—some called for the death penalty. The media labeled Dzhokhar a monster and a terrorist; one media outlet asked if Dzhokhar was “what evil looks like.”

Bostonians adopted “Boston Strong” as their rallying cry, signifying their courage and resilience in the wake of unfathomable tragedy. They would need this courage and resilience in the ensuing days, weeks, months, and years. As is clear now, over eight years after the attack, justice would not be swift.

A

A Boston federal grand jury indicted Dzhokhar Tsarnaev (hereinafter “Tsarnaev”) on thirty counts, seventeen upon which the Government sought the death penalty. The District Court for the District of Massachusetts would conduct the trial in its Eastern Division—that is, in Boston.

The parties submitted their joint proposed questionnaire for voir dire after Tsarnaev’s two unsuccessful venue-change motions and one unsuccessful mandamus. One proposed question was, “What did you know about the facts of this case before you came to court today (if anything)?” J.A. 475. The court expressed concern with this question, explaining that it could “cause trouble because it [would] be so unfocused.” J.A. 480. The Government expressed its support of the court’s position, leading the court to strike the question for fear that the question could generate “unmanageable data.” J.A. 481. The court opted instead to gauge jurors’ preconceptions by asking whether, because of their exposure to pretrial publicity, they had formed opinions about Tsarnaev’s guilt or the proper punishment. If a juror answered “yes,” the court would then ask whether she could set her opinions aside and render an impartial verdict based on the evidence presented at trial. The ability to be impartial despite one’s preconceptions, the court emphasized, was “the biggest issue in voir dire.” J.A. 482.

The court began interviewing the 1,373-person pool of prospective jurors in January 2015. The court divided the pool into six panels, telling each the basic facts of the case and instructing them to complete the parties’ finalized 100-question questionnaire. This questionnaire asked jurors about their exposure to pretrial publicity, their social media habits, their backgrounds, and their views on the death penalty. At the top of the questionnaire was a summary of the case which was intended to contextualize abstract questions for the individuals and enable them to respond with the case in mind.

After excusing hundreds of individuals based on their questionnaire responses, the court narrowed the pool of prospective jurors to 256. The court and counsel would begin live questioning of prospective jurors, and so it was at this

point that Tsarnaev requested that the court ask prospective jurors about their knowledge of the case. The court declined Tsarnaev's request, worried that detailed questioning about what a juror thought he or she knew about the events before trial could place the wrong emphasis and even create bias where none existed before.

The court expressed a similar worry in response to Tsarnaev's renewed request for content-related questions about jurors' exposure to pretrial publicity. Specifically, Tsarnaev wanted the court to ask prospective jurors, "What stands out in your mind from everything you have heard, read[,] or seen about the Boston Marathon bombing and the events that followed it?" J.A. 489. In denying this request, the court reasoned that not only were there already detailed questions and answers in the questionnaire that concerned pretrial publicity, but that too detailed questioning about exposure to pretrial publicity would "not likely yield reliable answers." J.A. 494.

Tsarnaev filed his third venue-change motion (and second unsuccessful mandamus) at the end of January 2015, citing a survey he had conducted which, he claimed, indicated that most of the prospective jurors thought him guilty already. The court denied Tsarnaev's motion on the ground that voir dire was "successfully identifying potential jurors who [were] capable of serving" fairly and impartially. Pet. App. 223a. In addition, the court emphasized that the questionnaire answers were "only a starting point": the decision to excuse or impanel any prospective juror would depend on "all the information available, but especially on the individual interviews of each of the jurors, face to face." Pet. App. 225a. The court assured the parties that each would have the opportunity to explore questionnaire responses further with the jurors, and that no answer "need[ed] or deserve[d] to be accepted at face value." Pet. App. 226a.

The court narrowed the juror pool to seventy by the end of February 2015, then to the final twelve in early March 2015. Tsarnaev exercised all twenty of his peremptory challenges as he filed a fourth venue-change motion. In that motion, he argued that nine of the twelve seated jurors did not answer questions about the content of the pretrial publicity they consumed, and that four of those nine believed based on pretrial publicity that Tsarnaev had participated in the bombings. The court rejected Tsarnaev's motion because it was assured by its thorough examination and by jurors' statements that the jurors could render an impartial verdict despite any exposure to pretrial publicity. As for possible sentences, none of the jurors expressed a predisposition toward imposing the death penalty.

B

Two years after the bombing, Tsarnaev stood trial and admitted guilt on all charges. The jury heard testimony from nearly one hundred witness and received over one thousand exhibits, and ultimately convicted Tsarnaev on all charges.

During the penalty phase, jurors heard from sixty witnesses and reviewed 180 exhibits. They recommended the death penalty on six of the seventeen eligible charges. The court imposed the jury's recommended sentences and gave concurrent and consecutive prison terms on the remaining counts, including twenty life terms.

Tsarnaev appealed his death penalty sentences to the First Circuit. Relying on the First Circuit's decision in *Patriarca v. United States*, 402 F.2d 314 (1st Cir. 1968), Tsarnaev argued that the pretrial publicity in his case created a "significant possibility that jurors [had] been exposed to potentially prejudicial material" such that the district court was required to ask not only whether jurors had seen pretrial publicity but what, specifically, they had seen. Pet. App. 44a.

The First Circuit reversed and remanded for new sentencing, holding that the district court abused its discretion in overlooking the *Patriarca* rule and instead relying on jurors' assurances as to their own impartiality. The First Circuit reasoned that *Patriarca* required the district court to inquire into the content of jurors' pretrial publicity exposure because there was a "significant possibility that jurors [had] been exposed to potentially prejudicial material" and because defense counsel requested such content-questions. Pet. App. 53a.

The Government sought review and this Court granted certiorari on the issue of whether the First Circuit erred in vacating Tsarnaev's capital sentences on the ground that the district court did not ask content-questions related to jurors' exposure to pretrial publicity.

II

The *Patriarca* rule allows courts of appeals to reverse on a paper record when a district court does not ask content-questions related to jurors' exposure to pretrial publicity. On this basis alone, we find the *Patriarca* rule to be an unreasonable exercise of the First Circuit's supervisory power. Still, to further illustrate the rule's unreasonableness, we point to the fact that the rule compels reversal even when a district court conducts an intensive, well-reasoned, and, in all other respects, comprehensive voir dire process, just as the district court did in the case before us.

A

We agree with Tsarnaev that supervisory rules must not "conflict with constitutional or statutory provisions," *Thomas v. Arn*, 474 U.S. 140, 148 (1985), and must "represent reasoned exercises of the courts' authority," *Ortega-Rodriguez v. United States*, 507 U.S. 234, 244 (1993). We now evaluate these two prongs in turn.

Contrary to the Government’s argument, this Court’s analysis in *United States v. Payner*, 447 U.S. 727 (1980) does not render the *Patriarca* rule unconstitutional or in violation of federal law. In *Payner*, we very consciously construed a limited exclusionary rule that respected the balance of interests embodied in our Fourth Amendment decisions: a criminal defendant’s freedom from unlawful search and seizure, and the ability of courts to ascertain the truth in a criminal case. See *Payner*, 447 U.S. at 733-34. We reversed the lower court in *Payner* because it had extended the scope of the exclusionary rule to cover evidence from unlawful searches and seizures of third parties. In so doing, the court reweighed interests that this Court had already weighed. Here, however, there is no extant constitutional interest that we must weigh or previously have weighed against the constitutional right of defendants to an impartial jury. While a criminal defendant has the right to an impartial jury, a prospective juror has no right to serve. Accordingly, we find that the *Patriarca* rule does not contravene the Constitution or federal law.

Turning now to the reasonableness of the *Patriarca* rule, we find that the rule improperly cabins the district court’s discretion in conducting voir dire—discretion that this Court has repeatedly deemed “broad.” See *Mu’Min v. Virginia*, 500 U.S. 415, 423 (1991); *Rosales-Lopez v. United States*, 451 U.S. 182, 189 (1981); *Aldridge v. United States*, 283 U.S. 308, 310 (1931); cf. *Skilling v. United States*, 561 U.S. 358, 396 (2010) (“In reviewing claims [relating to the impartiality of particular jurors], the deference due to district courts is at its pinnacle”). When reversing under the *Patriarca* rule, a court of appeals effectively invalidates the discretion that a district court had exercised in choosing which questions not to ask jurors.

The *Patriarca* rule states that where there is a significant possibility that jurors have been exposed to potentially prejudicial material, the court should, on request of counsel, individually question jurors on the “kind and degree of [their] exposure to the case or the parties, the effect of such exposure on [their] present state of mind, and the extent to which such state of mind is immutable or subject to change from evidence.” *Patriarca*, 402 F.2d at 318. *Patriarca* was not a case in which there was a significant possibility that prospective jurors had been exposed to potentially prejudicial material; it also was not a case in which defense counsel requested content-questions relating to prospective jurors’ pretrial publicity exposure. Notably, the First Circuit did not actually seek to or need to apply the rule it ultimately placed upon the lower courts. The decision in *Patriarca* would have no bearing on Tsarnaev’s case if the First Circuit had not, sua sponte, offered its opinion in dicta. Furthermore, a survey of our precedents strongly cuts against the rule’s reasonableness.

Repeatedly, this Court has reaffirmed the broad discretion to which trial courts are entitled in conducting voir dire. As early as 1895, we have said that inquiry into prospective jurors’ biases, opinions, and prejudices “is conducted under

the supervision of the court, and a great deal must, of necessity, be left to its sound discretion.” *Connors v. United States*, 158 U.S. 408, 413 (1895). We reemphasized that principle in *Aldridge*, 283 U.S. at 310 (“the court had a broad discretion as to the questions to be asked”), again in *Rosales-Lopez v. United States*, 451 U.S. at 189 (“federal judges have been accorded ample discretion in determining how best to conduct the voir dire”), and again in *Mu’Min v. Virginia*, 500 U.S. at 423 (same). Thus, we should view with skepticism any rule that limits the trial court’s reasoned exercise of that discretion.

There is good cause for granting trial courts broad discretion over voir dire procedures. It is the trial judge who first holds “the obligation to impanel an impartial jury,” and who, unlike reviewing courts, “must rely largely on his immediate perceptions.” *Rosales-Lopez*, 451 U.S. at 189. The latter fact is not a reason to doubt the judgment of the trial judge—rather, it’s a reason to doubt the propriety of higher courts’ oversight. The trial judge has the benefit of “sit[ting] in the locale where the publicity is said to have had its effect” and can bring his resulting understanding of the locale’s media exposure into his evaluation of jurors. *Mu’Min*, 500 U.S. at 427. The trial judge has the further benefit of assessing, in person, a “prospective juror’s inflection, sincerity, demeanor, candor, body language, and apprehension of duty.” *Skilling*, 561 U.S. at 386. The trial judge is best equipped to assess these intangibles which an appellate judge cannot sufficiently glean from a paper record.

We have sometimes used our supervisory authority to make voir dire requirements where there has been a “reasonable possibility” of jurors harboring racial or ethnic prejudice. *Rosales-Lopez*, 451 U.S. at 190-91; *Ristaino v. Ross*, 424 U.S. 589, 597 n.9 (1976); see *Aldridge*, 283 U.S. at 310-15. Specifically, a plurality of this Court in *Rosales-Lopez* took guidance from both *Aldridge* and *Ristaino* to conclude that trial courts must ask questions getting at prospective jurors’ racial prejudices when a defendant is accused of a violent crime, requests such questions, and is from a different racial or ethnic group than the victim. *Rosales-Lopez*, 451 U.S. at 192. Such a situation would require that a court ask questions related to prospective jurors’ racial prejudices even though the Constitution does not demand it. *Id.* at 190. Even still, we have left to the trial court the threshold decision of whether the circumstances suggest a reasonable possibility that racial or ethnic prejudice will affect the jury. *Id.*

Disqualifying a prospective juror due only to the fact that the juror had a preconceived notion as to a defendant’s guilt “would establish an impossible standard.” *Irvin v. Dowd*, 366 U.S. 717, 723 (1961). A juror does not have to be a clean slate—he need only be able to set aside his prejudices accrued from any source (like pretrial publicity) and render an impartial verdict. See *id.* at 722. If any prospective juror was shown to be prejudiced against a defendant’s race, however, seating that individual would be “a gross injustice.” *Aldridge*, 283 U.S. at 314. A

court cannot genuinely expect a juror to let go of a prejudice that targets an immutable characteristic of a defendant's identity.

Biases that one develops from pretrial publicity are easier to dispel than racial or ethnic prejudices and, in any event, are more "subject to change from evidence." See *Patriarca*, 402 F.2d at 318. While biases from pretrial publicity may operate subconsciously, they are necessarily of relatively recent vintage and more superficial than racial or ethnic prejudices. It is thus more reasonable, and more realistic, to expect the presentation of facts at trial to counter one's lingering biases from pretrial publicity than to dispel one's racist views. The truth-seeking process is not designed to alter such deeply ingrained, long-held prejudices.

The possibility of racial prejudice against a Black defendant charged with a violent crime against a white person is "sufficiently real that the Fourteenth Amendment requires that inquiry be made into racial prejudice." *Mu'Min*, 500 U.S. at 424. The Fourteenth Amendment does not call for a similar mandate with respect to pretrial publicity. While questions relating to the content of prospective jurors' exposure to pretrial publicity "might be helpful" in high-profile cases, they are not constitutionally mandated. *Mu'Min*, 500 U.S. at 422-26. This makes sense: what matters is not the content of the pretrial publicity to which jurors were exposed, or even whether or to what extent jurors were exposed to pretrial publicity, but whether jurors can set aside any resulting prejudices they may have developed and render an impartial verdict.

Tsarnaev notes an important difference between his case and *Mu'Min* that warrants our attention. In *Mu'Min*, the universe of media coverage was forty-seven newspaper articles: the judge himself could review the full extent of pretrial publicity over a few morning coffees. Here, as Tsarnaev emphasizes, publicity coverage played out across the internet and social media and across all varieties of media outlets (from local real-time news stations to far-right news networks), touching on a diversity of themes in a diversity of ways. Accordingly, Tsarnaev argues that the trial judge in his case should have asked questions relating to the content of jurors' exposure to pretrial publicity because, unlike in *Mu'Min*, the judge could not possibly know the true extent and nature of publicity to which jurors were exposed.

Although we agree with Tsarnaev that the trial court in this case could not know, without asking, what exactly jurors had heard, seen, or read about the case, we question the utility of undertaking the inquiry. If the trial court had asked "content-questions," what, then, was it to do with the responses? Would the court then need to research every social media post, news article, and YouTube video that jurors mentioned and survey each for prejudicial material? Or would the court instead have to determine from each juror's piecemeal recollections whether the content of any source was prejudicial enough to undermine the juror's ability to be

impartial? Or would content-questioning become an empty formalism, inevitably leading to the fundamental question of whether jurors, having heard, saw, or read what they did, could be impartial? Regardless of the approach a court might take, “that time soothes and erases is a perfectly natural phenomenon”: jurors may no longer feel the raw prejudicial effects they once felt from the publicity they were exposed to, let alone remember what it is they heard, saw, or read. *See Patton v. Yount*, 467 U.S. 1025, 1033 (1984). We recognize that we are in a different time than that of *Mu’Min*. We think, however, that the extent of pretrial publicity in this case is actually an additional reason not to require the trial court to ask content-questions, since the data generated may be unmanageable and even unreliable.

Still, since content-questions related to jurors’ exposure to pretrial publicity are admittedly helpful in some instances, a trial court may use its broad discretion to ask them. It is an unreasonable and impermissible supervisory practice, however, for courts of appeals to use a trial court’s omission of such questions as a basis for reversal. Because the *Patriarca* rule requires courts of appeals to reverse on a paper record when district courts do not ask content-questions related to jurors’ exposure to pretrial publicity, we find the *Patriarca* rule to be an unreasonable exercise of the First Circuit’s supervisory authority.

B

Applying the *Patriarca* rule to this case showcases its unreasonableness as a wooden and inflexible rule. The trial court was subject to reversal only for declining to ask one type of question, even though it properly estimated the possibility for prejudice from pretrial publicity, conducted thorough and reasonable voir dire, and impaneled an impartial jury. What’s more, the trial court was subject to reversal for declining to ask “content-questions” even though it found that such questions would have burdened and problematized the voir dire process.

First, recall the process by which the trial court narrowed the initial 1,373-person pool to twelve jurors over the course of three months. The court divided the initial pool into six panels, informed them of the basic facts of the case, and instructed them to complete a 100-question questionnaire that asked about their backgrounds, views on the death penalty, social media habits, and exposure to pretrial publicity. The court used those answers to narrow the pool to 256 people, and then, over the next twenty-one days, delved more deeply into each person’s questionnaire responses through individual, in-person examination. The court then narrowed the pool again to seventy individuals and gave parties twenty peremptory challenges each as individual examination continued. After both parties duly exercised their peremptory challenges, the court narrowed the pool to the twelve jurors that ultimately sat on Tsarnaev’s trial. These facts alone reveal that the voir dire process was necessarily extensive and time-consuming, and targeted at uncovering jurors’ relevant biases.

Next, recall the court's reasons for denying Tsarnaev's first request for questions about what prospective jurors had heard, read, or seen about the case. The court expressed concern that asking such questions could "cause trouble because it will be so unfocused," and ultimately rejected the question because it could generate "unmanageable data." J.A. 480-81. The court chose instead to gauge jurors' preconceptions through questions that would elicit more definitive answers—that is, questions that asked individuals whether they had preexisting opinions and whether they could set those aside in rendering an impartial verdict. The court reminded the parties that this was the "biggest issue" in voir dire, impliedly finding that Tsarnaev's proposed questions did not support resolution of this issue. J.A. 482. Even still, there were and would be more detailed questions and answers concerning pretrial publicity. For example, the questionnaire question that asked how much media the individual consumed could trigger follow-up questions at in-person examination that would more directly get at the heart of the issue. Accordingly, though the court declined Tsarnaev's request, it offered and executed a more tailored, more focused approach to individual examination.

Also recall the court's reasons for denying Tsarnaev's later request for content-questions related to exposure to pretrial publicity. The court was concerned that asking jurors what they knew about the facts of the case before they came to court "implied that there were facts of the case that [individuals] could objectively know," and the court "didn't want to support that misimpression." J.A. 485. Further, the court thought Tsarnaev's reformulation of the question as, "What did you read or hear about this case before you came here?" would be "too unguided." J.A. 485-86. The court again emphasized that there were detailed answers in the questionnaire about exposure to pretrial publicity that did not need to be repeated, so "digging for details from someone who ha[dn't] prepared by spending time reflecting and recalling all of that [would] likely not yield reliable answers." J.A. 494. Thus, not only did the court have affirmative support for the approach it took to voir dire, but it avoided the significant issues that Tsarnaev's requested approach presented.

The court was not oblivious to the high-profile nature of this case, nor did it disregard offhandedly the benefit of content-questions related to individuals' exposure to pretrial publicity: it acknowledged that "[m]any, obviously, ha[d] views about this [case] because of the extensive publicity." J.A. 502. Rather, the court largely questioned the propriety of Tsarnaev's preferred means for evaluating prospective jurors' abilities to be impartial—that is, putting the same question to every juror concerning the content of their exposure to pretrial publicity. The court felt that "one of the difficulties here is being too tied to a script," and explained that every juror is different and must be questioned in a way that is tailored to the answers they've previously given. J.A. 498. As a result, the court concluded that applying a "repeatable formula . . . [could] be counterproductive actually rather than helpful." *Id.* Tsarnaev's proposed questions could quite harmfully "place the

wrong emphasis for the juror” and “misdirect[] things a bit” by forcing jurors to scan their memories for potentially prejudicial material. J.A. 502. In the court’s reasoned opinion, Tsarnaev’s proposed questions could create bias where none existed before.

The court was ultimately satisfied with its approach to voir dire, and expected to gauge, with finality, jurors’ ability to decide this case impartially by reminding them of their duty to hold the government to its proof. Tsarnaev is correct that we cannot accept jurors’ assurances as to their own impartiality at face value, and that the court must ask questions that elicit objective information about jurors’ preconceptions. Tsarnaev understates, however, the intensiveness of the court’s inquiry here. While the court did rely on jurors’ assurances of their own impartiality, it did so in the context of jurors’ responses to the detailed questionnaire and to extensive in-person examination, and with the benefit of firsthand observation of jurors’ “inflection, sincerity, demeanor, candor, body language, and apprehension of duty.” See *Skilling*, 561 U.S. at 386. The court was able to square its observations with jurors’ answers to earlier questions before the court *itself* made the final determination as to jurors’ impartiality.

We find that the trial court’s approach to voir dire was proper because it accounted for and averted the issues inherent to Tsarnaev’s proposed line of questioning—issues which included distracting and misleading prospective jurors and generating unmanageable data. The *Patriarca* rule, insofar as it calls for reversal based on voir dire even when voir dire was prudent, thorough, and well-reasoned, cannot be a reasonable supervisory rule.

C

Tsarnaev and the First Circuit point to two other facts as evidence that the jury was not impartial: (1) that nine of the twelve seated jurors did not answer questions about the content of their pretrial publicity exposure and (2) that four of those nine believed based on pretrial publicity that Tsarnaev participated in the bombings. In any case where murder or acts of terrorism are involved, however, we find it would be rare for individuals not to have any preconceptions as to the defendant’s guilt. Having preconceptions as to a defendant’s guilt is no bar to serving as a juror so long as the juror can set aside that preconception and remain impartial, just as having those preconceptions is no bar to acting as the defense attorney so long as the attorney can zealously advocate for the defendant.

Regardless, Tsarnaev admitted and never once contested his guilt at trial. There is no indication that Tsarnaev conceded guilt because he believed jurors would not give him a fair trial. The only important contested issue at trial and on appeal is this sentence. Importantly, not a single seated juror expressed a predisposition to impose a capital sentence.

* * *

We are of the opinion that overturning the district court's voir dire proceedings for failure to comply with the *Patriarca* rule was unreasonable. The error of *Patriarca* can be no clearer than it is in this case, where the district court conducted thorough, well-reasoned, and well-tailored voir dire, yet still was subject to reversal for the omission of a single inquiry. As a result of extensive voir dire, the district court impaneled an impartial jury to try Tsarnaev for his crimes and determine the sentences that were due to him. We thus reverse the First Circuit's judgment and remand for further proceedings consistent with this opinion.

Applicant Details

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Applicant Education

BA/BS From **Cornell University**
 Date of BA/BS **May 2014**
 JD/LLB From **Columbia University School of Law**
<http://www.law.columbia.edu>
 Date of JD/LLB **May 14, 2019**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Columbia Business Law Review**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Jessup International Law Moot Court**

Bar Admission

Admission(s) **New York**

Prior Judicial Experience

Judicial Internships/Externships **Yes**
Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

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kjudge@law.columbia.edu
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

Philip Andriole

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The Honorable Lewis J. Liman
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I am I am a third-year trial attorney at the Department of Justice Antitrust Division, Criminal Section. I graduated from Columbia Law School in May 2019 and joined the DOJ in September 2019 through the Attorney General's Honors Program. I write to apply for a clerkship.

I believe I would be an asset to your chambers because of my experience as a federal prosecutor. At the DOJ, I have thrived on a range of matters: I contributed to large teams staffed with seasoned prosecutors, worked with agents to open and lead a grand jury investigation, and independently managed a docket of cases from indictment to plea. Additionally, before joining the DOJ, I was a judicial intern for Hon. Audrey G. Fleissig (E.D. Mo.) during my 1L summer in 2017 and a judicial extern for Hon. Richard M. Berman (S.D.N.Y.) during the spring semester of my 2L year in 2018.

I want to clerk to become a better public servant. Joining the DOJ out of law school was not how I expected to start my career, but it was one of the best decisions I have ever made. I have found working to advance the DOJ's mission and representing the United States tremendously rewarding, and I never intend to look back: I want to spend the rest of my legal career in public service. This enhances the application I would bring to your chambers and shapes how I would use the skills I acquire.

Enclosed, please find a resume, law school transcript, undergraduate transcript, and writing sample. Also enclosed are letters of recommendation from Professor Anu Bradford (212 854-9242, abradf@law.columbia.edu), Professor Kathryn Judge (212 854-5243, kjudge@law.columbia.edu), and AUSA Katherine Calle (862 301-0657, kcalle@usdoj.gov).

Thank you for your consideration.

Sincerely yours,



Philip Andriole

Philip Andriole

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EDUCATION

Columbia Law School, New York, NY J.D., received May 2019

Awards: James Kent Scholar (3L); Harlan Fiske Stone Scholar (1L, 2L)
 Jessup Moot Court International Rounds 2018: Top Respondent Side, 4th Top Oralist
 Jessup International Law Moot Court: 1st Place, Northeast Regional 2017, 2018
 Activities: *Columbia Business Law Review*, Staffer (2L); Editorial Board, Articles Editor (3L)
 Columbia University Judicial Board, Vice Chair: Fall 2016 - Spring 2019
 Professor Kathryn Judge, Research Assistant: May 2018 - May 2019
 Professor Anu Bradford, Research Assistant: May 2017 - May 2019
 Professor Thomas Merrill, Teaching Assistant (1L Property): Aug. 2017 - Dec. 2017

Cornell University, Ithaca, NY B.S., received May 2014
 B.S., Industrial & Labor Relations; Minors in Economics, Law & Society, and Inequality Studies

EXPERIENCE

Department of Justice, Antitrust Division, New York, NY Sept. 2019 - Present
Trial Attorney (Attorney General's Honors Program)

- Selected contributions: Lead attorney on investigation into wire fraud on public housing contracts; responsible for formulating investigative strategy and leading covert witness approaches and subject interviews. Subpoena compliance lead for main subject on investigation into bid-rigging on \$50m+ state contract. Developed wire fraud conspiracy charge for bid-rigging indictment and led grand jury witness preparation. Procurement Collusion Strike Force S.D.N.Y. lead. New York Office Innovation Co-Chair. 2021 Intern Hiring Committee member.
 - Lead back-office attorney for *U.S. v. Aiyer* (18-cr-333). Drafted motions *in limine* responses, successful opposition to defense expert proffers, and Rule 29 / 33 motion opposition. Consulted on appellate brief and argument. Received Assistant Attorney General Award for work on team.

U.S. Attorney's Office, E.D.V.A., Alexandria, VA Mar. 2020 - Nov. 2020
Special Assistant United States Attorney (Detail)

- Selected contributions: Argued in District Court in 10+ Supervised Release matters. Drafted and filed oppositions to 5+ compassionate release motions. Lead attorney on 4 felony illegal re-entry cases from indictment through plea and sentencing.
 - Argued motions *in limine*, delivered opening statement, direct examination and cross-examination of defendant in DUI trial (*U.S. v. Miller*, 1:20-mj-262, E.D.V.A., Dec. 8, 2020).

Davis Polk & Wardwell LLP, Summer Associate May 2018 - July 2018
Hon. Richard M. Berman, S.D.N.Y., Judicial Extern Jan. 2018 - April 2018
Hon. Audrey G. Fleissig, E.D.M.O., Judicial Intern May 2017 - July 2017
Deloitte Consulting LLP, HR Transformation Strategy Consultant Aug. 2014 - Aug. 2016
White House Office of Presidential Correspondence, Summer Associate Summer 2012
St. Louis Zoo, Sea Lion Show Host Summer 2009, Summer 2010

Kids Enjoy Exercise Now! (KEEN), New York, NY 2016 - Present
Volunteer; NY Associate Board, Member (May 2018 - Present), Secretary (Jan. 2021 - Present)

New York Cares, New York, NY 2014 - Present
Volunteer; SAT Tutor (Nov. 2021 - Mar. 2022)



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SEAL OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK

Columbia College, Engineering and Applied Science, General Studies, Graduate School of Arts and Sciences, International and Public Affairs, Library Service, Human Nutrition, Nursing, Occupational Therapy, Physical Therapy, Professional Studies, Special Studies Program, Summer Session
A, B, C, D, F (excellent, good, fair, poor, failing). NOTE: Plus and minus signs and the grades of **P** (pass) and **HP** (high pass) are used in some schools. The grade of **D** is not used in Graduate Nursing, Occupational Therapy, and Physical Therapy.

American Language Program, Center for Psychoanalytic Training and Research, Journalism

P (pass), **F** (failing). Grades of **A, B, C, D, P** (pass), **F** (failing) — used for some offerings from the American Language Program Spring 2009 and thereafter.

Architecture

HP (high pass), **P** (pass), **LP** (low pass), **F** (failing), and **A, B, C, D, F** — used June 1991 and thereafter **P** (pass), **F** (failing) — used prior to June 1991.

Arts

P (pass), **LP** (low pass), **F** (fail), **H** (honors) used prior to June 2015.

Business

H (honors), **HP** (high pass), **P1** (pass), **LP** (low pass), **P** (unweighted pass), **F** (failing); plus (+) and minus (-) used for **H, HP** and **P1** grades Summer 2010 and thereafter.

College of Physicians and Surgeons

H (honors), **HP** (high pass), **P** (pass), **F** (failing).

College of Dental Medicine

H (honors), **P** (pass), **F** (failing).

Law

A through **C** [plus (+) and minus (-) with **A** and **B** only], **CR** (credit - equivalent to passing), **F** (failing) is used beginning with the class which entered Fall 1994. Some offerings are graded by **HP** (high pass), **P** (pass), **LP** (low pass), **F** (failing). **W** (withdrawn) signifies that the student was permitted to drop a course, for which he or she had been officially registered, after the close of the Law School's official Change of Program (add/drop) period. It carries no connotation of quality of student performance, nor is it considered in the calculation of academic honors.
E (excellent), **VG** (very good), **G** (good), **P** (pass), **U** (unsatisfactory), **CR** (credit) used from 1970 through the class which entered in Fall 1993.

Any student in the Law School's Juris Doctor program may, at any time, request that he or she be graded on the basis of Credit-Fail. In such event, the student's performance in every offering is graded in accordance with the standards outlined in the school's bulletin, but recorded on the transcript as Credit-Fail. A student electing the Credit-Fail option may revoke it at any time prior to graduation and receive or request a copy of his or her transcript with grades recorded in accordance with the policy outlined in the school bulletin. In all cases, the transcript received or requested by the student shall show, on a cumulative basis, all of the grades of the student presented in single format — i.e., all grades shall be in accordance with those set forth in the school bulletin, or all grades shall be stated as Credit or Fail.

Public Health

A, B, C, D, F - used Summer 1985 and thereafter. **H** (honors), **P** (pass), **F** (failing) — used prior to Summer 1985.

Social Work

E (excellent), **VG** (very good), **G** (good), **MP** (minimum pass), **F** (failing).

A through **C** is used beginning with the class which entered Fall 1997. Plus signs used with **B** and **C** only, while minus signs are used with all letter grades. The grade of **P** (pass) is given only for select classes.

OTHER GRADES USED IN THE UNIVERSITY

AB = Excused absence from final examination.

AR = Administrative Referral awarded temporarily if a final grade cannot be determined without additional information.

AU = Audit (auditing division only).

CP = Credit Pending. Assigned in graduate courses which regularly involve research projects extending beyond the end of the term. Until such time as a passing or failing grade is assigned, satisfactory progress is implied.

F* = Course dropped unofficially.

IN = Work Incomplete.

MU = Make-Up. Student has the privilege of taking a second final examination.

R = For the Business School: Indicates satisfactory completion of courses taken as part of an exchange program and earns academic credit.

R = For Columbia College: The grade given for course taken for no academic credit, or notation given for internship.

R = For the Graduate School of Arts and Sciences: By prior agreement, only a portion of total course work completed. Program determines academic credit.

R = For the School of International and Public Affairs: The grade given for a course taken for no academic credit.

UW = Unofficial Withdrawal.

UW = For the College of Physicians and Surgeons: Indicates significant attempted coursework which the student does not have the opportunity to complete as listed due to required repetition or withdrawal.

W = Withdrew from course.

YC = Year Course. Assigned at the end of the first term of a year course. A single grade for the entire course is given upon completion of the second term. Until such time as a passing or failing grade is assigned, satisfactory progress is implied.

OTHER INFORMATION

NOTE: All students who cross-register into other schools of the University are graded in the **A, B, C, D, F** grading system regardless of the grading system of their own school, except in the schools of Arts (prior to Spring 1993) and in Journalism (prior to Autumn 1992), in which the grades of **P** (pass) and **F** (failing) were assigned. Notations at the end of a term provide documentation of the type of separation from the University.

% of **A** Effective fall 1996: Transcripts of Columbia College students show the percentage of grades in the **A (A+, A, A-)** range in all classes with at least 12 grades, the mark of **R** excluded. Calculations are taken at two points in time, three weeks after the last final examination of the term and three weeks after the last final of the next term. Once taken, the percentage is final even if grades change or if grades are submitted after the calculation. For additional information about the grading policy of the Faculty of Columbia College, consult the College Bulletin.

KEY TO COURSE LISTINGS

A course listing consists of an area, a capital letter(s) (denotes school bulletin) and the four digit course number (see below).

The **capital letter** indicates the University school, division, or affiliate offering the course:

A	Graduate School of Architecture, Planning, and Preservation
B	School of Business
BC	Barnard College
C	Columbia College
D	College of Dental Medicine
E	School of Engineering and Applied Science
F	School of General Studies
G	Graduate School of Arts and Sciences
H	Reid Hall (Paris)
J	Graduate School of Journalism
K	School of Library Services/Continuing Education (effective Fall 2002)
L	School of Law
M	College of Physicians and Surgeons, Institute of Human Nutrition, Program in Occupational Therapy, Program in Physical Therapy, Psychoanalytical Training and Research
N	School of Nursing

O	Other Universities or Affiliates/Auditing
P	School of Public Health
Q	Computer Technology/Applications
R	School of the Arts
S	Summer Session
T	School of Social Work
TA-TZ	Teachers College
U	School of International and Public Affairs
V	Interschool Course
W	Interfaculty Course
Y	Teachers College
Z	American Language Program

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The **first digit** of the course number indicates the level of the course, as follows:

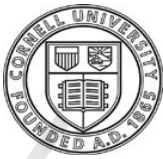
0	Course that cannot be credited toward any degree
1	Undergraduate course
3	Undergraduate course, advanced
4	Graduate course open to qualified undergraduates
5	Graduate course open to qualified undergraduates
6	Graduate course
7	Graduate course
8	Graduate course, advanced
9	Graduate research course or seminar

Note: Level Designations Prior to 1961:

1-99 Undergraduate courses
100-299 Lower division graduate courses
300-999 Upper division graduate courses

The term designations are as follows:
X=Autumn Term, **Y**=Spring Term, **S**=Summer Term
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RECORD OF: Philip David Andriole

CORNELL I.D. NO.: 2458172

RECORD DATE: 8/1/2017

PAGE: 1 of 2



COURSE TITLE	SUBJECT/NUMBER	MEDIAN	TOTAL ENROLLED	UNITS	GRADE	COURSE TITLE	SUBJECT/NUMBER	MEDIAN	TOTAL ENROLLED	UNITS	GRADE
FALL 2010						SPRING 2012					
Program: Industrial and Labor Relations						Program: Industrial and Labor Relations					
Plan: Industrial and Labor Relations						Plan: Industrial and Labor Relations					
INTRO MICROECONOMICS	ECON 1110	(B+)	(792)	3.00	B+	THE FIRST AMERICAN UNIVERSITY	AMST 2001	(A)	(262)	1.00	A
FWS:POWER AND POLITICS	GOVT 1101	(B+)	(89)	3.00	B	INTERMED MACROECON THEORY	ECON 3140	(B+)	(162)	4.00	A-
COURSE TOPIC(S): FWS:PWR/POL: US INT'L DEM PRO						ECONOMIC DEVELOPMENT	ECON 3710	(A-)	(105)	4.00	B
FRESHMAN COLLOQUIUM	ILRID 1500	(N/A)		1.00	SX	DRUGS&SOCIETY	SOC 2460	(B+)	(80)	4.00	A-
ECONOMICS OF WAGES&EMPLOYMENT	ILRLE 2400	(B+)	(113)	3.00	B+	**DEAN'S LIST**					
INTRO TO ORGANIZATL BEHAVIOR	ILROB 1220	(B+)	(202)	3.00	B	SUMMER 2012					
OUTDOOR INTERMEDIATE TENNIS	PE 1446	(N/A)		1.00	SX	Program: Industrial and Labor Relations					
TEST CREDITS APPLIED TOWARD INDUSTRIAL AND LABOR RELATIONS PROGRAM						Plan: Industrial and Labor Relations					
AP Biology	BIOG 1105			2.00	4.0	INTRO TO PUBLIC POLICY	GOVT 3071	(N/A)		4.00	A-
	BIOG 1106			2.00	0.0	AMERICA'S CHANGING FACES	GOVT 3128	(N/A)		2.00	A
AP Economics: Macroeconomics	ECON 1120			3.00	5.0	FALL 2012					
AP Government & Politics: U.S.GOV	ILRLE 1111			3.00	5.0	Program: Industrial and Labor Relations					
AP U.S. History	HIST 1530			4.00	4.0	Plan: Industrial and Labor Relations					
AP Mathematics: Calculus BC	MATH 1110			4.00	5.0	PAY	ILRHR 2020	(B+)	(81)	4.00	A
	MATH 1120			4.00	0.0	ESSENTIAL DESKTOP APPLICATIONS	ILRHR 2660	(A)	(116)	2.00	A
Transfer Totals:				22.00		CAREER DEVELPMT:THEORY&PRACTIC	ILRHR 3620	(N/A)		2.00	SX
SPRING 2011						COMP EMPL RELA IN CHINA&INDIA	ILRIC 4375	(B+)	(17)	4.00	B+
Program: Industrial and Labor Relations						INTRO TO DISABILITY STUDIES	ILRLR 1200	(A-)	(34)	3.00	A-
Plan: Industrial and Labor Relations						**DEAN'S LIST**					
INTRODUCTION TO CHINA	ASIAN 2212	(A-)	(205)	3.00	A-	SPRING 2013					
WAR&PEACE IN GREECE&ROME	CLASS 2680	(B+)	(20)	4.00	B	Program: Industrial and Labor Relations					
INTRO TO U.S. LABOR HISTORY	ILRLR 1100	(B+)	(98)	3.00	B	Plan: Industrial and Labor Relations					
FWS: PHILOSOPHICAL PROBLEMS	PHIL 1111	(B+)	(68)	3.00	B+	INTERMED MICROECON THEORY	ECON 3130	(B+)	(148)	4.00	B+
COURSE TOPIC(S): FWS: RELATIVISM						THE HISTORY OF CONSUMPTION	ILRLR 3870	(B+)	(94)	4.00	A-
FALL 2011						STATISTICAL METHODS FOR SOC SC	ILRST 2110	(A)	(26)	3.00	A
Program: Industrial and Labor Relations						SOCIAL INEQUALITY	SOC 2208	(B+)	(195)	4.00	A
Plan: Industrial and Labor Relations						**DEAN'S LIST**					
HUMAN RESOURCE MANAGEMENT	ILRHR 2600	(A)	(239)	3.00	A	FALL 2012					
LABOR & EMPLOYMENT LAW	ILRLR 2010	(B+)	(88)	3.00	B+	Program: Industrial and Labor Relations					
COLLECTIVE BARGAINING	ILRLR 2050	(B+)	(118)	3.00	B+	Plan: Industrial and Labor Relations					
WRITING SEMINAR IN LAW	ILRLR 2060	(A)	(15)	3.00	A	INTRO TO PUBLIC POLICY					
COURSE TOPIC(S): PERSPECTIVES ON DISABILITY						AMERICA'S CHANGING FACES					
INTRODUCTORY STATISTICS	ILRST 2100	(A-)	(185)	4.00	A	INTRO TO DISABILITY STUDIES					
DEAN'S LIST						**DEAN'S LIST**					

SEND TO: Phil Andriole
 philip.andriole@gmail.com
 DOCID:14620382
 United States

CASSANDRA DEMBOSKY
 UNIVERSITY REGISTRAR

RECORD OF: Philip David Andriole

CORNELL I.D. NO.: 2458172

RECORD DATE: 8/1/2017

PAGE: 2 of 2



COURSE TITLE	SUBJECT/NUMBER	MEDIAN	TOTAL ENROLLED	UNITS	GRADE	COURSE TITLE	SUBJECT/NUMBER	MEDIAN	TOTAL ENROLLED	UNITS	GRADE
FALL 2013											
Program:	Industrial and Labor Relations										
Plan:	Industrial and Labor Relations										
MARKETING	AEM	2400	(A-)	(577)	3.00	A-					
ECON OF CB IN SPORTS	ILRLR	4030	(B+)	(57)	4.00	B+					
CONTROVERSIES ABOUT INEQUALITY	ILROB	2220	(A-)	(184)	4.00	A					
APPLIED REGRESSION ANALYSIS	ILRST	2130	(A)	(26)	2.00	C					

SPRING 2014

Program: Industrial and Labor Relations

Plan: Industrial and Labor Relations

Plan: Inequality Studies Minor

STATS & APPLIED ECONOMETRICS	ECON	3125	(B+)	(71)	4.00	B+
BEHAVIORAL PUBLIC POLICY	ECON	3670	(A-)	(35)	3.00	A-
INTRODUCTION TO WINES & VINES	FDSC	1104	(A)	(190)	3.00	A+
NATURE FUNCTIONS LIMITS OF LAW	LAW	4131	(B+)	(118)	4.00	B+
RECREATIONAL GOLF	PE	1321	(N/A)		1.00	SX

DEAN'S LIST

Cumulative GPA: 3.539

CORNELL UNIVERSITY
INDUSTRIAL AND LABOR RELATIONS
BACHELOR OF SCIENCE
INDUSTRIAL AND LABOR RELATIONS
INEQUALITY STUDIES MINOR
LAW AND SOCIETY MINOR
ECONOMICS MINOR
MAY 25, 2014

END OF TRANSCRIPT

SEND TO: Phil Andriole
philip.andriole@gmail.com
DOCID:14620382
United States

CASSANDRA DEMBOSKY
UNIVERSITY REGISTRAR

Office of the University Registrar
B07 Day Hall, Ithaca, NY 14853-2801
(607) 255-4232 univreg@cornell.edu

CNC	-	Course cancelled after the ninth week of term.
FS, FWS	-	First-Year Writing Seminar - Equivalent to one term of English Composition at many institutions.
GL	-	In the descriptive title area - course taken at graduate level by Summer Session and Extramural students only.
H	-	"HONORS" for LL. M. Candidates.
HH	-	"HIGH HONORS" for LL. M. Candidates.
INC	-	Course not completed for reasons acceptable to Instructor. Completion is indicated by an asterisk in the last position of the grade field.
NA -		Not attending.
NG	-	Non-graded course - Grades are not awarded for these courses.
NGR	-	No grade reported - Instructor has not submitted a grade for this course.
R	-	Represents multi-term course not graded at end of first term.
S/U	-	"S" means C- or above; "U" means D+, D, D- or failure.
SX/UX	-	Indicates that a course is graded exclusively on "S" or "U" basis.
V	-	Visitor - Audit; course taken on a non-credit basis.
W	-	Indicates withdrawal from course after deadline.
*	-	Preceding credit hours - indicates temporary credit. Total credit earned with final grade for course appears in the term following.
*	-	In the grade field - indicates that the course was originally graded INC and has subsequently been completed.

Cornell Study Abroad - Transcript indicates courses taken, credits earned and foreign grades received. Foreign grades are not translated to the Cornell grading system.

Physical Education - Before 1982, Physical Education courses automatically printed on the transcript. If student took the course, the grade would be SX. If student did not enroll in the course, the grade would be UX.

Accreditation - Cornell University is accredited by the Middle States Association of Colleges and Schools.

Language - All courses are taught using the English language with the exception of certain language courses, e.g., French Literature or Japanese.

Median Grades - Median grades are posted on transcripts for all undergraduates matriculating in the Fall 2008 and after. Median grades are not reported for all courses.

Credit Hour Definition

A student will receive one credit by satisfactorily completing a course that requires at least fifteen hours (15) of instruction and at least thirty hours (30) of supplementary assignments. Hours are adjusted proportionately for other formats of study, e.g., laboratory, studio, research problem-based learning, and independent study.

Dean's List

Posting the Dean's List notation began with Fall term 1971. Dean's List awards are posted for all Undergraduate units.

Grading Systems prior to September 1965

These are described on a separate sheet which is provided with appropriate transcripts.

Current Grading System

Grades are on a letter scale: A+ through D-, pass; F, failure. The grades of S (satisfactory) or U (unsatisfactory) may be used when no greater precision in grading is required. Grades of S or U are not assigned numerical value and thus are not averaged with other grades in computing grade point averages.

Letter grade values are combined with course credit hours to produce an average based on a 4.3 scale. Semester and cumulative averages are included on the transcript.

For the purpose of computing semester, year or cumulative averages, each letter grade is assigned a quality point value as follows:

A+ = 4.3	B+ = 3.3	C+ = 2.3	D+ = 1.3	
A = 4.0	B = 3.0	C = 2.0	D = 1.0	F = 0
A- = 3.7	B- = 2.7	C- = 1.7	D- = 0.7	

Beginning with Fall term 1983, Law School averages are computed using the following point values:

A+ = 4.33	B+ = 3.33	C+ = 2.33	D+ = 1.33	
A = 4.00	B = 3.00	C = 2.00	D = 1.00	F = 0
A- = 3.67	B- = 2.67	C- = 1.67	D- = 0.67	

There is only one official university transcript for an individual student which represents the complete Cornell University academic record.

April 07, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I am writing to you in support of Philip Andriole and his application for a clerkship position with you.

I have known Philip since the summer of 2017 in my capacity as a Professor at Columbia Law School. I hired Philip to be my research assistant for that summer. I was very pleased with his work, and invited him to continue do research for me during the school year. Philip worked closely with me throughout the remainder of his time at the law school, and I have gotten to know his academic abilities and personality quite well. I therefore feel confident and truly delighted to be writing on his behalf.

Let me start by saying that I think extremely well of Philip, and firmly believe that he would be a terrific law clerk who possesses the skills and drive to excel in that position. Philip is a very intelligent, highly motivated, and broadly gifted young lawyer. As a research assistant, Philip proved to be distinctly resourceful, analytically sophisticated, deeply committed, and extremely reliable. We worked together on my book, which analyzes the external impact of the European Union laws on the United States and beyond: ranging from environmental law to antitrust law, and from the protection of data privacy to chemical regulation. This work has required him to be comfortable with delving constantly into new areas of law, and closely studying numerous regulations that he had never encountered before. Philip also had to summarize his work in a detailed yet easily digestible manner, given the sheer volume of legal developments that he was responsible for reviewing and analyzing. The work products he delivered consistently reflected solid command of the material, careful and skilled legal analysis, and exceptionally organized and crisp summaries of his findings.

Philip had the ability to work efficiently and finish any given task in a timely manner. He repeatedly proved that he can assume multiple responsibilities and carry them out on time with remarkable diligence and precision. Indeed, this is a quality where he clearly stands out among his peers. He is a more organized thinker and more effective communicator than almost any equally talented law student I have worked with. He also knows how to set priorities, in addition to exercising unfailing judgment on when to consult me and when to proceed on his own – strengths that many students at his stage of a career lack. From the way he approached each task, it was clear that his interest in law runs deep, and that his intuitions and analytical skills are exceptionally well-suited for this profession. Overall, his work products were consistently impeccable in quality and his contributions to my research invaluable.

I am fortunate to be able to teach many gifted students at Columbia Law School with the academic ability, commitment, and personal drive to succeed. Yet Philip stands out even among this talented group of students. Many smart students can write terrific exams—and Philip has written many of those. But few exhibit the maturity and commitment that Philip does. He has an irreproachable sense of responsibility, he never fails to exercise good judgment, and he never fails to deliver what you expect from him. In addition to his academic abilities and remarkable work ethic, I would also like to highlight his professional demeanor. He is a talented young lawyer, an extremely cordial individual, and simply a delightful person to work with. It is the combination of all these qualities that, in my view, would make Philip a terrific clerk in your chambers.

I am delighted that Philip is applying for a clerkship with you. I trust that his intellectual excellence, resourcefulness, analytical sophistication, and dedication to strive beyond even the highest expectations make him an excellent candidate for this renowned position. I therefore support his application with great enthusiasm, and I remain available to answer any questions you might have.

Sincerely,

Anu Bradford

Anu Bradford - abradf@law.columbia.edu

April 07, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I write to recommend Phil Andriole for a clerkship in your chambers. Phil was an outstanding research assistant, and has since honed his skills as part of the DOJ Honors Program. He is also quite likeable and a good team player. I expect he would be a great asset to have in chambers.

I first got to know Phil as a student in two of my classes, Legislation and Regulation of Financial Institutions. He was quiet at first, but soon found his voice. He was always prepared when called upon, and his answers revealed a deep understanding of the materials we were covering. He did a particularly impressive job understanding the practical implications and the bigger issues at stake in cases and other materials.

I naturally reached out to see if he might serve as a research assistant, and I am exceptionally grateful that I did. He worked for me both semesters the following year. His work was always thoughtful, well done and provided in a timely fashion. I was particularly impressed with a research memorandum he put together providing an overview of literature from different fields examining how to define, measure and assess the implications of "trust." It was a very broad assignment. It was an exceptionally broad assignment and yet, rather than being overwhelmed or overwhelming me with too much information, he provided a well-structured, thorough and relatively concise memorandum with representative pieces from a host of different fields. In short, in response to a difficult and vague assignment, he produced just what I needed.

I am especially grateful to have the opportunity to write this letter because of Phil's professional trajectory. Unlike most of his peers at Columbia, Phil opted to forego working at a large law firm to work in the Antitrust Division as part of the DOJ Honors Program. This reflects both his commitment to public service, and his willingness (and perhaps ability) to value meaningful work and skill development over pecuniary awards. It's an approach to professional development that leaves me excited to watch what he does over the course of his career.

Please do not hesitate to reach out if you have any questions. I would enjoy the opportunity to speak about Phil's candidacy. I can be reached via email, kjudge@law.columbia.edu, and on my cell, 206-852-5027.

Best regards,

Kathryn Judge
Harvey J. Goldschmid Professor of Law
Columbia Law School

Kathryn Judge - kjudge@law.columbia.edu - 212-854-5243



U.S. Department of Justice

*United States Attorney
District of New Jersey*

970 Broad Street, 7th floor
Newark, New Jersey 07102

862-301-0657

March 21, 2022

To Whom it May Concern:

I am writing in support of Philip Andriole's application for a clerkship position. I worked with Phil at the DOJ Antitrust Division from September 2019 to July 2020, at which point I moved to the United States Attorney's Office for the District of New Jersey. Phil would be an asset to your chambers, and I recommend him enthusiastically.

In October of 2019, shortly after Phil joined the Antitrust Division, we tried a case, *United States v. Akshay Aiyer*, in the Southern District of New York. Phil was assigned to work in the "back office" to assist the trial team. He did for us what a cadre of associates did for the defense team. Phil was the quintessential team player; he completed any task, no matter how small, without complaint and did it well. His assistance ultimately proved invaluable, as he drafted a significant government brief during the trial. The defendant wanted to call two expert witnesses in his case-in-chief. From the Government's perspective, much of their testimony was irrelevant and would have been misleading to the jury. Accordingly, the Government raised objections to the proposed testimony and associated exhibits. The Court ordered the Government to submit a brief supporting its position within a day. Since the trial team was in court, the job fell to Phil. With approximately one month of antitrust experience under his belt, Phil diligently drafted a clear, well-supported, concise, and nuanced brief laying out the Government's position. The Court sustained many of the Government's objections.

Phil's performance on that brief is just one example of his stellar work as a trial attorney. It also demonstrates why he would make an excellent clerk. Phil works swiftly and ably under pressure and can easily distill complex issues to their essential components. He researches scrupulously, learns areas of law quickly, and writes clearly. He is an excellent editor, possesses an unparalleled work ethic, and exercises sound judgment.

As a colleague and former district and appellate clerk, I can attest that Phil would be a fine addition to your chambers. Like many applicants, he has attended excellent educational institutions, worked on a law review, served as a research assistant, interned for federal judges, and summered at a law firm. Without question, these experiences have prepared him well for a federal clerkship. Unlike most applicants,

however, he has spent the past three years practicing law as a trial attorney. This real-life, practical experience will give him an invaluable perspective when approaching legal issues and drafting opinions.

Finally, in recommending Phil, I would be remiss if I discussed only his professional abilities. In addition to being a bright and skilled attorney, Phil is a kind, thoughtful, and decent human being. To start, Phil has chosen a career in public service. Despite being offered a lucrative position in the private sector, Phil chose to work for the Antitrust Division. He likewise intends to continue in government service following his clerkship. In addition, Phil spends significant time outside of work serving his community. As just one example, in the Spring of 2020, when New York City was suffering profoundly as a result of the COVID-19 pandemic, Phil spent his spare time delivering meals to elderly New Yorkers. Such service is always commendable, but it is especially impressive in light of the fact that most people were sheltering in place and by volunteering Phil put himself at greater risk of contracting COVID-19. Instead of choosing himself, Phil chose the vulnerable in his community.

In short, I cannot recommend Phil highly enough for a position in your chambers. If you have any additional questions, please do not hesitate to contact me at katherine.calle2@usdoj.gov or at 862-301-0657.

Respectfully,



Katherine J. Calle
Assistant U.S. Attorney

Philip Andriole

90 Washington St., Apt. 6C, New York, NY 10006 – 314 795-4071 – philip.andriole@gmail.com

Writing Sample

This sample is a response in opposition to a Defendant’s motion to revoke a detention order. I handled this matter as a Special Assistant U.S. Attorney for the Eastern District of Virginia during September 2020. An AUSA was the attorney of record for the matter and reviewed my draft filing. She provided limited stylistic feedback.

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA

v.

CAPRICE FOSTER,

Defendant.

Case No. 1:20-cr-178 (TSE)

**UNITED STATES' RESPONSE IN OPPOSITION TO DEFENDANT'S
MOTION TO REVOKE DETENTION ORDER**

The United States of America, by and through its attorneys, opposes the Defendant's Motion to Revoke Detention Order. In her motion, Caprice Foster ("Defendant") argues that this Court should revoke the detention order imposed against her because she is not a flight risk, has strong ties to the community, and has seen her health deteriorate during detention. ECF No. 44. This Court should not release the Defendant because there is no condition or combination of conditions that will reasonably assure the safety of the community or the appearance of the Defendant if she is released from detention.

1. Background

The United States alleges that the Defendant and her husband and co-defendant, Marcus Foster ("Marcus"), undertook a calculated, long-term scheme to defraud banks, lenders, real estate brokers, and others by stealing other people's identities between at least 2018 and June 2020. *See generally* ECF No. 31. Their tactics were consistent: the Defendant and Marcus would obtain real individuals' personal identifiable information ("PII") in various ways, often through the Defendant's former job at a time-share company or by stealing U.S. Mail. *See generally id.* The Defendant and Marcus would in turn use this information to, among other things, open fraudulent bank accounts and initiate fraudulent transactions, apply for loans, lease automobiles, and rent

homes. *See generally id.*

For example, the Defendant and Marcus were arrested by federal authorities on July 8, 2020. ECF No. 11. At the time, they were residing at a rental home in Dunn Loring, Virginia. ECF No. 19 at 1. The pair had obtained the lease on the home using another individual's identity and had resided there for more than six months without paying rent. *See* Case No. 1:20-sw-800, ECF No. 2 ¶¶ 79-83 ("Dunn Loring SW").¹ During the arrest at the Dunn Loring property, the undersigned counsel can proffer that law enforcement officers searched the home and found extensive evidence of the Defendant's criminal activity, such as: real and altered identification documents in the names of other people, bank records in the names of other people, check books in the names of other people, altered checks, bags containing U.S. Mail addressed to others, and even a vehicle purchased using someone else's PII. Furthermore, in October 2019, the Defendant and Marcus were arrested by local authorities under remarkably similar circumstances – unlawfully occupying a residence using other people's names while possessing a slew of fraudulent documents and bags containing U.S. Mail addressed to other individuals. ECF No. 2 ¶¶ 4-9. In fact, the same identity Marcus had falsely provided to local authorities during the October 2019 arrest was used to rent the Dunn Loring residence in 2020. *See* Dunn Loring SW ¶ 79; ECF No. 2 ¶ 4. Moreover, the undersigned counsel can proffer that the voluminous evidence of fraud located in the July 2020 search appeared to be related to criminal conduct the Defendant and Marcus committed after similar documents were seized in connection with their October 2019 arrest. Evidence discovered through the government's investigation has linked the Defendant and Marcus to fraudulent accounts, loans, and leases in the names of many of the individuals whose

¹ The undersigned counsel understands that the cited affidavit in support of a search warrant for the Defendant's Dunn Loring residence is currently under seal. The United States is in the process of moving to unseal the affidavit. The undersigned counsel further proffers that the Defendant and Marcus were in fact arrested at the Dunn Loring residence on July 8, 2020.

identification and financial documents were discovered during the search of the Dunn Loring home.

The Defendant's criminal history beyond the instant scheme is extensive and characterized by fraudulent and deceptive conduct. *See* ECF No. 19 at 3-5. Between 1992 and 2019, the Defendant has been arrested at least 27 times. *Id.* A number of those arrests have led to convictions. In 1995, at age 23, she was arrested for felony theft in Maryland and convicted in 1996. *Id.* at 3. In 1997, at age 25, she was arrested for false pretenses (felony) and false statements (felony); she was convicted of those charges in Virginia in 1998. *Id.* In 1998, at age 26, she was arrested for felony credit card fraud, felony credit card theft, and felony credit card forgery; in 2000 she was convicted of those charges in Virginia. *Id.* She was found in violation of her probation on the 1998 and 2000 charges four times: once in 2000, twice in 2001, and once in 2007. *Id.* at 4-5. In 2019, at age 47, she was arrested in Maryland for unauthorized removal of property and convicted later that year. *Id.* at 5. Currently the Defendant is also subject to 5 outstanding felony warrants issued on November 24, 2019 for one count of burglary, 2 counts of forgery: bank note, and 2 counts of identity theft: obtain identification to defraud. *Id.* at 5.

The Defendant also has a number of failures to appear. In 1999, she failed to appear for a proceeding in Maryland District Court on a felony charge of bad check/utter/non-sufficient funds over \$300. *Id.* at 4. In 2008, she again failed to appear for her proceedings in the same felony matter. *Id.* Recently, in October 2019, she failed to appear in Maryland Circuit Court for proceedings on charges of felony theft: \$10,000 to under \$100,000, felony motor vehicle/unlawful taking, and misdemeanor unauthorized removal of property. *Id.* at 5.

On July 7, 2020, the United States filed a complaint against the Defendant and Marcus for conspiracy to commit bank fraud in violation of 18 U.S.C. § 1349. ECF No. 1. The same day, U.S. Magistrate Judge John F. Anderson issued arrest warrants for the pair. ECF Nos. 9-10. On

July 8, 2020, those arrest warrants were executed. ECF No. 11. The next day, the Defendant and Marcus made their initial appearances virtually before Magistrate Judge Anderson. ECF Nos. 16-17. On July 10, 2020, the Defendant appeared for her preliminary hearing before Judge Anderson. ECF No. 25. The Defendant waived the hearing and the Court found probable cause. *Id.* On July 16, 2020, the Defendant appeared for her detention hearing before Magistrate Judge Ivan D. Davis. ECF No. 29.

Prior to the detention hearing, U.S. Probation Officer Mariel G. Stewart filed a Pretrial Services Report (“Report”) with the Court. ECF No. 19. The Report described the Defendant’s personal history, employment history, finances, health, and criminal history. *See id.* It appears the Defendant does not have a residence besides the home she was unlawfully residing in under a fraudulently obtained lease. Additionally, the Defendant told the probation officer she was employed full-time by Hilton at the time of her arrest and was receiving a \$4,000 monthly salary while furloughed due to COVID. ECF No. 19 at 2. This was not true – Hilton Grand Vacations terminated the Defendant nearly a year earlier, on August 5, 2019, after she failed to file sufficient paperwork to support her request for medical leave and continued on unapproved medical leave for more than three months. *See Ex. A.* The Defendant’s reported estimated monthly cash flow, including her unsubstantiated \$4,000 monthly furlough salary, is still -\$3080 and she reported assets totaling an estimated net worth of -\$13,600. *Id.* at 2. The Defendant did not provide the probation officer with any source of legitimate income.

At the detention hearing, the United States emphasized that the Defendant presented a substantial risk of flight given her lack of a fixed residence, lack of employment and income, and her repeated failures to appear as well as failures to abide by court orders. The United States also argued that the Defendant was a danger to the community in light of her persistent efforts to steal others’ identities in order to perpetuate fraud, even while on probation for other charges.

Magistrate Judge Davis granted the United States' request for detention over the arguments of the Defendant. ECF No. 29.

On July 30, 2020, a grand jury returned an Indictment against the Defendant alleging one count of conspiracy to commit bank fraud in violation of 18 U.S.C. § 1349. ECF No. 31. The Defendant was arraigned and pled not guilty before this Court on August 14, 2020. ECF No. 39.

On September 8, 2020, this Court received a letter from the Defendant explaining that she "physically and mentally can't take it anymore" because of the conditions at the Alexandria Detention Center ("ADC"). ECF No. 42. On September 16, 2020, the Defendant filed the present motion to revoke Magistrate Judge Davis's detention order, arguing that the Defendant was not a flight risk in light of her ties to the community and health issues. ECF No. 44.

2. Applicable Law

Pursuant to the Bail Reform Act ("BRA"), 18 U.S.C. § 3145(b), a person ordered detained by a magistrate judge may file a motion for revocation of the order with the court having original jurisdiction over the offense. "When the district court acts on a motion to revoke or amend a magistrate judge's pretrial detention order, the district court acts *de novo* and must make an independent determination of the proper pretrial detention or conditions of release." *United States v. Stewart*, 19 Fed. App'x 46, 48 (4th Cir. 2001) (citing *United States v. Rueben*, 974 F.2d 580, 585-86 (5th Cir. 1992)). The BRA provides that a court shall order pretrial detention upon finding that there is no condition, or combination of conditions, that will reasonably assure the appearance of the defendant and the safety of the community. 18 U.S.C. § 3142(e). In determining the feasibility of conditions of release, the court shall consider four factors:

- (1) the nature and circumstances of the offense charged;
- (2) the weight of the evidence against the person;
- (3) the history and characteristics of the person, and;

(4) the nature and seriousness of the danger posed by the person's release.

18 U.S.C. § 3142(g). It is the government's burden to show, under these factors, either that (a) by a preponderance of the evidence, no combination of conditions will reasonably assure the defendant's presence at future court proceedings; or, (b) by clear and convincing evidence, no combination of conditions will reasonably assure the safety of the community.² See *Stewart*, 19 Fed. App'x at 48-49.

3. Argument

In the instant motion, the Defendant suggests that her ties to the community, release plan, and health issues suitably mitigate any risk of non-appearance. This is not the case. The Defendant presents an extreme risk of flight or non-appearance given her history and characteristics. Moreover, if the Court were to release the Defendant from custody, it is likely she would continue to cause financial harm to others within the community. Finally, the Defendant's medical conditions do not meaningfully reduce her risk of non-appearance and do not otherwise justify her release from detention.

i. The Defendant poses an extreme risk of flight or non-appearance.

The Defendant's history and characteristics, as well as the nature and circumstances of the offense charged, suggest it is impossible for the Court to establish conditions of release that would assure her appearance at future proceedings.

The Defendant is charged with maintaining a number of false identities and executing a series of complex, fraudulent transactions that, at their base, allow the Defendant to avoid financial responsibility, personal accountability, and lawful oversight of her activities. The Defendant's criminal history is replete with similar dishonest and deceitful conduct. The Defendant has also

² For some crimes, there arises a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of any of person and the community. See 18 U.S.C. § 3142(e). This presumption does not apply to the Defendant's case.

repeatedly disregarded court orders and probation conditions and has, on numerous occasions, failed to appear in court as directed. Her transgressions were not youthful or isolated incidents: the Defendant has displayed this pattern of activity throughout her adult life. There is nothing in the record to suggest she would treat this Court's order to appear with any more respect than the numerous directives she has ignored in the past. To the contrary, the Defendant's familiarity and indeed adeptness at such deceitful conduct makes her particularly well-suited to successfully flee the area or not appear at her upcoming proceedings.

Additionally, the evidence against the Defendant is considerable. As the affidavit in support of the criminal complaint and arrest warrant articulates, the United States has evidence that ties the Defendant to at least six identity-theft victims and many more mail theft victims. ECF No. 2. The search of the Defendant's residence at the time of her arrest identified additional victims and yielded extensive documentary and physical evidence such as bank records, checkbooks, and falsified identification documents. The weight of the evidence against the Defendant makes her especially likely to flee or not appear given the harsh penalties for the crime she is accused of: conspiracy to commit bank fraud carries a maximum penalty of 30 years' imprisonment and a fine of \$1,000,000. 18 U.S.C. §§ 1344, 1349.

Finally, the Defendant faces considerable legal exposure outside of the instant matter that further incentivizes her non-appearance or flight from the area. The Defendant has 5 outstanding felony warrants from Fairfax County. ECF No. 19 at 5. The Defendant also faces trial for two misdemeanor charges, and a felony flight from justice charge, in Fairfax County. Virtually every fact in the record suggests that the Defendant poses an extreme risk of non-appearance.

ii. *The Defendant's release plan does not at all mitigate her risk of flight or reasonably assure her presence at future court proceedings.*

The Defendant provides that a family friend, Antwan Spearman, qualifies as a third-party custodian who would reasonably assure her appearance at future court proceedings. ECF No. 44

at 3.

The undersigned counsel learned from Probation Services that, given the ongoing pandemic, the office is not conducting post-detention-hearing investigations beyond running a records checks. Probation Services expects Defendants, through counsel, to proffer additional facts to establish the suitability of a third-party custodian. In her motion, the Defendant provides limited information about Mr. Spearman – *see* ECF No. 44 at ¶9 – and has not provided further details to the Probation Office. To date, the Defendant has not shown that Mr. Spearman is a suitable third-party custodian.

The Defendant has no residence, no income, no release plan, and virtually no incentive to remain in the area for her pending proceedings. The mere existence of a third-party who is apparently willing to serve as her custodian does not provide any meaningful guarantee she will appear for future proceedings.

iii. The Defendant poses a risk to the community.

The Defendant poses a risk to the community in light of her extensive history of fraud and her lack of any legitimate source of income. The Defendant was in an identical situation – evicted, without a job, and facing criminal charges – following her October 2019 arrest and release. The evidence strongly suggests that following that release the Defendant and Marcus quickly returned to the same fraudulent, criminal conduct that led to their initial arrest. In light of Defendant's history, there is no condition or combination of conditions the Court could impose to ensure Defendant would not simply continue the same pattern of criminal conduct upon her release.

iv. The Defendant's complaints about the conditions at the Alexandria Detention Center do not support her release.

In her letter, the Defendant makes a number of claims about the conditions at ADC and her deteriorating health. The undersigned counsel have investigated these claims and found many of them to be demonstrably false.

Defendant repeatedly claims that she is not receiving adequate medical care at ADC. The undersigned counsel spoke to an ADC official who relayed a starkly different situation. The Defendant requested to see a doctor. She was taken to the hospital on September 1st and was seen by a doctor, who saw fit to release her from the hospital back to ADC's custody the same day. The Defendant has apparently also complained because she was being seen by a nurse with a specialty in gynecology, and not a gynecologist. When ADC officials made an appointment with an offsite gynecologist, however, Defendant was purportedly upset that she was not given more advance notice of the appointment. Per ADC's COVID-19 policy, after both of the hospital visit and offsite appointment, the Defendant was kept in isolation for 14 days following her being off premises. Despite protesting that her health has deteriorated, the Defendant complains that she has not been released from isolation into general population, where her risk of contracting COVID or other viruses would presumably be greater. Finally, ADC officials relayed that Defendant's counsel had the opportunity to review the Defendant's medical records from ADC; tellingly, the motion filed after Defendant's letter does not substantiate the claims the Defendant makes about her health and her medical treatment while in custody and focuses primarily on other purported grounds for release. *See generally* ECF No. 44.

Similarly, the Defendant's claims about the conditions at ADC range from exaggerations to demonstrable falsehoods. For example, the Defendant writes that she can "count on one hand how many times [she] was allowed an Attorney Call." ECF No. 42 at 2. Records from ADC reflect that, as of September 18, 2020, the Defendant has called the phone number of the attorney representing her in this matter 28 times and an attorney representing her in another matter 18 times. *See* Ex. B. The Defendant also writes that "I can't talk to my family maybe once a week at 11:00pm and 12am, which I can't get them." ECF No. 42 at 2. The call records reflect this is very likely not true: in the week before the Defendant's September 4th letter she made calls

to her attorneys at: 9am on Friday, August 28th; 9am on Monday, August 31st; 12pm and 8pm on Tuesday, September 1st; 4pm on Wednesday, September 2nd; and 1pm and 3pm on Friday, September 4th. Ex. B. The Defendant's complaints appear to be without merit and do not justify her release.

CONCLUSION

The government respectfully requests that this Court issue an order denying the Defendant's motion to revoke detention. The government submits that continued detention of the Defendant pending trial in this matter is the only reasonable condition to assure her next appearance and the safety of others.

Respectfully submitted,

G. Zachary Terwilliger
United States Attorney

By: /s/
Heidi B. Gesch
Assistant United States Attorney
Philip D. Andriole
Special Assistant United States Attorney
United States Attorney's Office
Eastern District of Virginia
Alexandria, Virginia 22314
Phone: (703) 299-3700
Heidi.gesch@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which automatically generated a Notice of Electronic Filing to the counsels of record for the Defendant.

/s/

Philip D. Andriole
Special Assistant United States Attorney
United States Attorney's Office
Eastern District of Virginia
Alexandria, Virginia 22314

Applicant Details

First Name	Jacob
Last Name	Apkon
Citizenship Status	U. S. Citizen
Email Address	ja3782@nyu.edu
Address	<div> Address Street 475 Grand Street, Apartment 4A City Brooklyn State/Territory New York Zip 11211 </div>
Contact Phone Number	2036714665

Applicant Education

BA/BS From	Tufts University
Date of BA/BS	May 2016
JD/LLB From	New York University School of Law
	https://www.law.nyu.edu
Date of JD/LLB	May 19, 2021
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Moot Court Board
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/Externships	No
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Weissmann, Andrew
andrewweissmann@gmail.com
917-575-2171

Kaufman, Brett
bkaufman@aclu.org
(212) 549-2603

Sharkey, Catherine
SharkeyC@exchange.law.nyu.edu
212-998-6729

This applicant has certified that all data entered in this profile and any application documents are true and correct.

475 Grand St, Apt 4A
Brooklyn, NY 11211

March 02, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1620
New York, NY 10007-1312

Dear Judge Liman,

I am a recent graduate of New York University School of Law and am writing to apply for a clerkship in your chambers for the 2024 term or any subsequent term.

Enclosed, please find my resume, law school transcript, undergraduate transcript, and writing sample. I prepared my writing sample while a legal intern at the Brennan Center for Justice. In addition, the following people have written letters of recommendation on my behalf:

Brett Max Kaufman, Senior Staff Attorney, American Civil Liberties Union

Catherine Sharkey, Professor, New York University School of Law

Andrew Weissmann, Adjunct Professor, New York University School of Law

I hope to have the opportunity to speak further and can be reached by email at ja3782@nyu.edu or by phone at (203) 671-4665. Thank you for your consideration.

Respectfully,

/s/
Jacob Apkon

JACOB H. APKON

475 Grand St., Apt. 4A, Brooklyn, NY 11211
(203) 671-4665 | ja3782@nyu.edu

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY

J.D., *magna cum laude*, May 2021

Honors: *Order of the Coif*: Membership is limited to the top 10% of the graduating class
Florence Allen Scholar: Top 10% of the class after four semesters
Cyber Scholar at NYU Center for Cybersecurity, 2019–2021
Moot Court Board (journal equivalent), *Casebook Research & Writing Editor*
Just Security, *Student Staff Editor*

Activities: Technology Law and Policy Clinic (Fall 2019, Spring 2020)
Research Assistant, Professor Catherine Sharkey (Fall 2020)
Privacy Research Group, Student Fellow
Tutor, Civil Procedure

TUFTS UNIVERSITY SCHOOL OF ENGINEERING, Somerville, MA

B.S. in Computer Science, *cum laude*, May 2016

Honors: Dean's List

EXPERIENCE

DEBEVOISE & PLIMPTON LLP, New York, NY

Associate, September 2021—Present; *Summer Associate*, July 2020

Member of the litigation group. Worked on matters covering commercial litigation, data security, trademark, antitrust, and criminal defense. Authored several articles for the Debevoise Data Blog.

KNIGHT FIRST AMENDMENT INSTITUTE, New York, NY

Legal Intern, May 2020—July 2020

Supported staff attorneys on various litigation and FOIA matters. Assessed opportunities for future Institute involvement in areas relating to voting rights and mass protests against police brutality.

AMERICAN CIVIL LIBERTIES UNION, New York, NY

Clinical Law Student, September 2019—May 2020

Coauthored amicus brief arguing for increased particularity of digital search warrants under the Fourth Amendment. Analyzed First and Fourth Amendment arguments to challenge government requests for location information.

BRENNAN CENTER FOR JUSTICE, Washington, DC

Legal Intern, May 2019—August 2019

Drafted legal memorandum on First Amendment protections afforded to foreign nationals engaged in political speech and policy memorandum on the defunct Congressional Office of Technology Assessment. Researched court decisions interpreting FARA statute. Assisted counsel across all Brennan Center initiatives in preparing for meetings on Capitol Hill. Tracked and analyzed proposed legislation ranging from foreign interference in elections to domestic terrorism.

SOROCO, Boston, MA

Senior Software Engineer, July 2016—July 2018

Core engineering team member at an early phase venture creating robotic process automation solutions for Fortune 500 companies. Participated in the sales, contracting, development, and deployment cycle. Responsibilities included serving as an interface between the technical team and non-technical client stakeholders, coordinating a team of software engineers to automate an essential business function for a Fortune 500 insurer, and applying machine learning to develop solutions improving the reliability of the fraud scoring platform for a Fortune 500 credit card company, leading to an important strategic partnership. Involved in IP protection as the lead inventor for three patent applications.

ADDITIONAL INFORMATION

Advanced in Python, SQL, C/C++, JavaScript, HTML5/CSS. Enjoy photography, national parks, sailing, and music.

Name: Jacob Apkon
 Print Date: 07/05/2021
 Student ID: N16652563
 Institution ID: 002785
 Page: 1 of 2

New York University
 Beginning of School of Law Record

Degrees Awarded

Juris Doctor
 School of Law
 Honors: magna cum laude
 Major: Law
 Order of the Coif

Fall 2018

School of Law Juris Doctor Major: Law				
Lawyering (Year)		LAW-LW 10687	2.5	CR
Instructor: Rachel Wechsler				
Torts		LAW-LW 11275	4.0	A-
Instructor: Christopher Jon Sprigman				
Procedure		LAW-LW 11650	5.0	A
Instructor: John Sexton				
Contracts		LAW-LW 11672	4.0	B+
Instructor: Kevin E Davis				
1L Reading Group		LAW-LW 12339	0.0	CR
Topic: Oliver Wendell Holmes				
Instructor: Barry E Adler				
Current	AHRS		15.5	15.5
Cumulative			15.5	15.5

Spring 2019

School of Law Juris Doctor Major: Law				
Constitutional Law		LAW-LW 10598	4.0	A-
Instructor: Daryl J Levinson				
Lawyering (Year)		LAW-LW 10687	2.5	CR
Instructor: Rachel Wechsler				
Legislation and the Regulatory State		LAW-LW 10925	4.0	A-
Instructor: Adam M Samaha				
Criminal Law		LAW-LW 11147	4.0	A
Instructor: Rachel E Barkow				
1L Reading Group		LAW-LW 12339	0.0	CR
Topic: Oliver Wendell Holmes				
Instructor: Barry E Adler				
Financial Concepts for Lawyers		LAW-LW 12722	0.0	CR
	AHRS		14.5	14.5
Current			14.5	14.5
Cumulative			30.0	30.0

Fall 2019

School of Law Juris Doctor Major: Law				
National Security Law and Policy Seminar		LAW-LW 10067	2.0	B+
Instructor: Andrew Weissmann Lisa Monaco				
Antitrust Law		LAW-LW 11164	4.0	A-
Instructor: Christopher Scott Hemphill				
Technology Law and Policy Clinic		LAW-LW 12148	3.0	A
Instructor: Brett Kaufman Jason Michael Schultz				
Technology Law and Policy Clinic Seminar		LAW-LW 12149	3.0	A-
Instructor: Jason Michael Schultz				
Cybersecurity Scholars Workshop		LAW-LW 12570	1.0	CR

Instructor: Randal Scot Milch

Current	AHRS	13.0	13.0
Cumulative		43.0	43.0

Spring 2020

School of Law
Juris Doctor
Major: Law

--

Due to the COVID-19 pandemic, all spring 2020 NYU School of Law (LAW-LW.) courses were graded on a mandatory CREDIT/FAIL basis.

--

Criminal Procedure Survey	LAW-LW 10436	4.0	CR
Instructor: Andrew Weissmann			
Defamation, Privacy and Business Torts	LAW-LW 11918	3.0	CR
Instructor: Catherine M Sharkey			
Presidential Powers Seminar	LAW-LW 12122	2.0	CR
Instructor: Richard H Pildes Robert Bauer			
Advanced Technology Law and Policy Clinic	LAW-LW 12429	3.0	CR
Instructor: Brett Kaufman Jason Michael Schultz			
Advanced Technology Law and Policy Clinic Seminar	LAW-LW 12430	2.0	CR
Instructor: Brett Kaufman Jason Michael Schultz			
Cybersecurity Scholars Workshop	LAW-LW 12570	1.0	CR
Instructor: Nasir Memon Randal Scot Milch			
Current	AHRS	15.0	15.0
Cumulative		58.0	58.0

Allen Scholar-top 10% of students in the class after four semesters

Fall 2020

School of Law
Juris Doctor
Major: Law

Professional Responsibility and the Regulation of Lawyers	LAW-LW 11479	2.0	B+
Instructor: William E Nelson			
Evidence	LAW-LW 11607	4.0	A-
Instructor: Daniel J Capra			
Property	LAW-LW 11783	4.0	A
Instructor: William E Nelson			
Cybersecurity Law and Technology Seminar	LAW-LW 12535	2.0	A-
Instructor: Randal Scot Milch			
Cybersecurity Scholars Workshop	LAW-LW 12570	1.0	CR
Instructor: Randal Scot Milch			
Current	AHRS	13.0	13.0
Cumulative		71.0	71.0

Spring 2021

School of Law
Juris Doctor
Major: Law

Free Speech	LAW-LW 10668	3.0	A+
Instructor: Amy M Adler			
Survey of Intellectual Property	LAW-LW 10977	4.0	A-
Instructor: Barton C Beebe			
Moot Court Board	LAW-LW 11553	1.0	CR
Federal Courts and the Federal System	LAW-LW 11722	4.0	B+
Instructor: Helen Hershkoff			

Name: Jacob Apkon
Print Date: 07/05/2021
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Institution ID: 002785
Page: 2 of 2

Cybersecurity Scholars Workshop	LAW-LW 12570	1.0	CR
Instructor: Randal Scot Milch			
Research Assistant	LAW-LW 12589	1.0	CR
Instructor: Ryan Goodman			
	<u>AHRS</u>	<u>EHRS</u>	
Current	14.0	14.0	
Cumulative	85.0	85.0	
Staff Editor - Moot Court 2019-2020			
Casebook Research & Writing Editor - Moot Court 2020-2021			
End of School of Law Record			

Unofficial

Jacob Apkon
Villanova University

Summer 2013

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Differential Equations w/ Linear Algebra		A	1.0	



ANDREW WEISSMANN
Professor of Practice
Adjunct Professor of Law

NYU School of Law
 139 MacDougal Street, 616
 New York, NY 10012
P: 212 998 6119
 andrew.weissmann@nyu.edu

June 9, 2021

RE: Jacob Apkon, NYU Law '21

Your Honor:

I write at the request of Jacob Apkon, who I understand has submitted an application to be one of your law clerks. I recommend him to you for this position as he is a smart, engaging, and sincere student who will be an excellent lawyer.

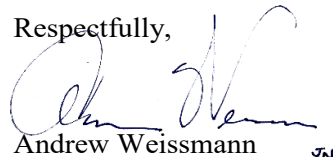
Jacob was in two of my courses: a seminar in the fall on national security law and policy and, in the spring, a Criminal Procedure Survey course. The seminar focused on both the legal and policy issues involved in the formulation of national security policy and decision-making, particularly as performed by the National Security Council. Once the students had a sufficient understanding of key legal principles, they dealt with hypothetical situations presenting various thorny issues, with individual students taking on the roles of various stakeholders (the State Department, Department of Justice and Federal Bureau of Investigation, CIA and NSA, White House, NSC Legal Advisor, etc.).

My Criminal Procedure course is a more traditional part of the law school curriculum, examining the intricacies of the Fourth, Fifth, and Sixth Amendments, exploring cutting-edge issues in cyber and terrorism investigations and electronic searches.

Jacob's performance, in class and on his papers, demonstrated that he has solid analytic abilities. He grasps issues quickly and identifies key arguments pro and con for a particular position. Jacob was an active participant in class, without ever being overbearing. Instead, when he spoke I could be assured that he had something thoughtful and interesting to contribute. Although I had limited exposure to Jacob's writing, his three papers in our seminar demonstrated organized writing, advocating an interesting and well-reasoned perspective.

On a personal level, I got to know Jacob in a series of meetings where he discussed with me his aspirations and goals. He is, without question, a nice and thoughtful young man, who would be a wonderful addition to any chambers. I am confident, based on his academic and personal qualities, that he will be an excellent law clerk. If I can answer any questions you may have please call me at (917) 575-2171.

Respectfully,



Andrew Weissmann


New York University
A private university in the public service

 School of Law
 Faculty of Law

Jason Schultz
Professor of Clinical Law
Brett Kaufman
Adjunct Professor of Law

May 29, 2020

RE: Jacob Apkon, NYU Law '21

Your Honor:

It is our distinct pleasure to recommend Jacob Apkon for a clerkship in your chambers. As an attorney for the American Civil Liberties Union that teaches in the NYU Technology Law & Policy Clinic and a Professor of Clinical Law, we have supervised a large number of talented young lawyers—and Jacob stands out. He is an interested and thoughtful colleague, a sharp thinker, and an eager contributor to high-level work. Having clerked for four different federal judges between the two of us, we are enormously confident that he has what it takes to be a prized law clerk.

Throughout his two semesters in the clinic (including one semester in its invitation-only advanced version), Jacob impressed us with his independent thinking, his intellectual curiosity, his commitment to mastering difficult challenges, and his developing sense of sound professional and ethical judgment. Jacob's clinic projects challenged him to learn different forms of legal writing even as he developed subject-matter expertise on an unknown area of law (specifically, different areas of Fourth Amendment searches and seizures). His work was superlative—and perhaps as important to clinical teachers like us, he showed a constant ability to incorporate feedback, learn, grow, and improve his skills throughout the year. This progress makes us excited to follow the rest of his career, including as a successful clerk.

In the clinic, Jacob contributed to several projects. In the Fall 2019 semester, he helped the ACLU think through and then draft (with a partner) a model amicus brief addressing how courts should apply the traditional overbreadth and particularity requirements for warrants in the context of searches of digital devices and information. Jacob and his partner engaged in a kind of bottom-up review of Fourth Amendment law and the constitutional purposes of the various warrant requirements, canvassed the last decade of judicial opinions applying those requirements to searches of computer hard drives and phones, developed a set of principles and mechanisms to propose to court, and drafted a brief that the ACLU has begun to adapt and file in different jurisdictions around the country. The project was challenging, as there were few ready-made resources or example briefs upon which Jacob and his teammate could rely, and they were forced to consider a range of fact patterns and cases in advance, in order to make the brief useful to the organization going forward. The product was exceptional, and Jacob's contributions—both on the page and in discussions with ACLU attorneys about the brief's strategic and tonal emphases—were critical.

Jacob Apkon, NYU Law '21
May 29, 2020
Page 2

Jacob's experience working on the ACLU model brief sufficiently whet his appetite for written legal practice that he joined our advanced clinic this past Spring 2020 and took on an ACLU project regarding an unusual but creative litigation over the use of a particular kind of novel surveillance technology. While client confidences prevent us from disclosing the specifics of this work, Jacob's approach and output was outstanding. The context of the litigation is without precedent, which presented numerous challenges of research, organization, outlining, and writing. It also required Jacob to draft in different voices: first, in an overall litigation memorandum, and second, in an advocacy brief. Jacob handled this all with aplomb.

Jacob's success in our Spring semester is particularly notable because his writing abilities (in all its aspects) truly rounded into form—not simply through experience, but through his own commitment to improving them. Our clinic requires formal self-assessments before, during, and after each semester, and heading into Spring, Jacob specifically identified his desire to focus on, practice, and improve his writing skills as his semester-long goal. Even amidst the challenges presented during that semester by the ongoing remote-learning environment due to the COVID-19 pandemic, Jacob remained on schedule and on task, regularly presenting drafts of work for evaluation and feedback from ACLU attorneys. In our discussions about writing (where were frequent), Jacob often recalled things we or others had said in class discussions and supervisory sessions from the previous semester, and explained how he had gone about focusing on building good habits.

Jacob's second semester project allowed him to take individual ownership of his work in a way that teaming up in the first semester had not. But even as he worked alone on the second project, he remained thrilled by the way that even “solo” legal work is collaborative (even in the pandemic era). In his year-end self-evaluation, he evinced an uncommon perceptiveness for a second-year law student—and to us, his words are highly encouraging about his future success as a law clerk and lawyer. Of working with staff attorneys at the ACLU, he wrote: “It reminded me so much of software engineering, where before delving into a coding project in which each engineer would program a different section of the project, we would have long meetings about how best to architect the system. These design discussions were my favorite part about programming, and I think are starting to become my favorite thing about being a lawyer. The game of trying to come up with the perfect system design that any user could use, or the perfect legal argument that will convince (almost) any judge, is an extremely fun puzzle.” That attitude further manifested itself in Jacob's inquisitiveness about everything from related ACLU cases and arguments to varying approaches to amicus strategy in public-interest litigation, and we had wonderful discussions about these and other topics.

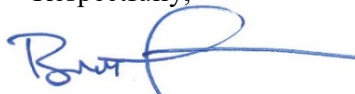
Jacob will also make a strong contribution to chambers because he has maturity, self-awareness, and strong communications skills. Our clinic does not focus exclusively on work product; rather, we consistently emphasize teamwork and the professional manner in which attorneys approach clients, cases, and each other. Here, Jacob excelled. As mentioned, his attention to iterations of his own work (and to editing others') led to a remarkable improvement in his writing ability over the course of the year. He was a frequent and useful contributor in class discussions, often relying on his programming background to shed interesting light on interesting topics related to law and technology. And finally, Jacob is a

Jacob Apkon, NYU Law '21
May 29, 2020
Page 3

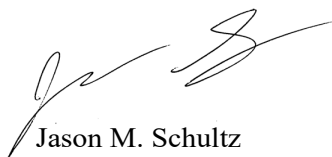
well-rounded, kind, interesting person, and a pleasure to be around—well-liked by his teachers, colleagues, and the professionals he regularly interacted with during his time in our clinic.

Thank you for considering Jacob's application for a clerkship. As we hope is clear, we highly recommend that you hire him as your clerk. If we can offer any further information or be of assistance in any way, please do not hesitate to contact us by email or phone.

Respectfully,



Brett Max Kaufman
Adjunct Professor of Law
NYU Technology Law & Policy Clinic
Senior Staff Attorney
ACLU Center for Democracy
125 Broad Street—18th Floor
New York, New York 10004
212.549.2603 | bkaufman@aclu.org



Jason M. Schultz
Professor of Clinical Law
NYU School of Law
245 Sullivan Street
New York, New York 10012
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New York University
A private university in the public service

School of Law

40 Washington Square South, 403

New York, NY 10012-1099

Telephone: (212) 998-6729

Facsimile: (212) 995-4590

E-mail: catherine.sharkey@nyu.edu

Catherine M. Sharkey
Segal Family Professor of Regulatory Law and Policy

June 11, 2021

RE: Jacob Apkon, NYU Law '21

Your Honor:

I write to recommend **Jacob Apkon** for a clerkship in your chambers. Jacob is a Florence Allen Scholar, an award given to students in the top 10% of the class. He is also a Cyber Scholar at the NYU Center for Cybersecurity, has served on the journal equivalent of the Moot Court Board, is a Student Staff Editor for *Just Security*, has participated in the TEchnology Law and Policy Clinic and the Privacy Research Group, and has been a tutor for 1Ls in Civil Procedure.

I first came to know Jacob as a student in my Defamation, Privacy, and Business Torts class during the Spring 2020 semester (which, due to COVID-19, was a credit/fail semester). Jacob was a standout student in the class, due to his genuine passion for privacy torts and big tech, and he offered valuable insights during class discussion on these topics as well as the Communications Decency Act and Amazon's status as it pertains to products liability.

Having been impressed by Jacob as a student, I asked him to be an RA for me, and am very glad to have done so. During the Fall 2020 semester, he assisted with research into the FDA's procedures for approving medical devices with embedded artificial intelligence and machine learning technologies. Jacob showed great interest in exploring how government agencies think about technology when making regulatory decisions, an area that he had previously pursued in other venues, for instance, at the Brennan Center in Washington DC during his 1L summer. He began the project by researching the FDA's existing regulatory pathways, then exploring how it applies each pathway to products containing AI. He also looked at the FDA's new proposed regulatory framework for making modifications to already-approved software devices that contained embedded machine learning models. He documented the industry's reaction to the proposed regulations and suggested modifications. He helped compile a list of all references the FDA had made to post-market review so as to provide a better understanding of how the FDA uses post-market surveillance in general, and how it could apply its approach to a constantly updating machine learning model.

Throughout his research work for me, Jacob demonstrated a keen ability to work on his own yet remained a solid and reliable communicator while he did so. He was always prepared and engaged in all of our discussions about his research, and he and I had many fruitful

Jacob Apkon, NYU Law '21
June 11, 2021
Page 2

conversations together about his work, which greatly informed and augmented my own. He was, moreover, always receptive to feedback about, for instance, directions in which his research might take him next, and he wrote extremely helpful and well-crafted research memos based on his work.

On a personal level, I have found Jacob a real pleasure to work with and to teach. He is a diligent, mature, and serious young man who has shown a genuine interest and curiosity in the issues he has studied and about which he has written. I have no doubt that he will be an asset to your chambers and I hope that you will seriously consider him as a candidate.

Sincerely,



Catherine M. Sharkey
Segal Family Professor of
Regulatory Law and Policy

WRITING SAMPLE

JACOB H. APKON

8 Rivington Street, Apt. 26
New York, N.Y. 10002
(203) 671-4665
ja3782@nyu.edu

The following writing sample is a memorandum analyzing the constitutionality of proposed legislation that would ban undocumented people from engaging in online issue advocacy. The memorandum was prepared for Brennan Center for Justice attorneys to aid in their work lobbying members of Congress. All words are my own and my writing was not edited by anyone except me.

The sample is shared with permission of the Brennan Center for Justice attorneys with whom I worked.

TO: Dan Weiner
FROM: Jacob Apkon
RE: First Amendment Protections for Non-Citizens Engaged in Issue Advocacy
DATE: June 28, 2019

QUESTION PRESENTED

In 2011, the D.C. District Court (then summarily affirmed by the United States Supreme Court) analyzed the Constitutionality of the McCain-Feingold Act's¹ express advocacy expenditure limitations on foreign nationals temporarily in the United States. The court found these bans constitutional and not in violation of the First Amendment. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), *aff'd* 565 U.S. 1104 (2012). The opinion explicitly leaves open the question of the constitutionality of bans on issue advocacy. *See id.* at 292 ("Our holding does not address such questions, and our holding should not be read to support such bans."). Following the Russian interference campaign in the 2016 election, it has been suggested that the law be expanded to ban foreign national issue advocacy. To survive a challenge under the First Amendment, would such a law need a carve out for undocumented people, like DREAMers, living in the United States?

SHORT ANSWER

Probably yes. The Government has a compelling interest in protecting American democracy from foreign intervention, but there is a strong argument that the interest is limited to candidate elections and does not apply to issue advocacy or political speech more broadly. The Government's compelling interest stems from a founding principle of political self-government, and precedent suggests that this principle applies only in relation to elections for representative

¹ 52 U.S.C.A. § 30121 (2002).

office. Proponents of such a bill will analogize issue advocacy to formal electioneering, but the two are philosophically different. Even if a court recognized a compelling interest to regulate foreign national issue advocacy, there are two other potential factors against the constitutionality of such a bill as applied to DACA recipients and other undocumented immigrants. First, an undocumented person's desire for permanent residency in the United States may offer them additional First Amendment protection as someone invested in this country's long-term political future, particularly when the Government has recognized an indefinite right to remain. And second, the First Amendment right to *hear* political speech may protect speakers already present in the country. This is a close case, and "[w]here the First Amendment is implicated, the tie goes to the speaker, not the censor." *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 474 (2007).

ANALYSIS

Laws limiting political speech implicate the First Amendment and are thus subject to "strict scrutiny," requiring the Government prove the law is "narrowly tailored" to achieve some "compelling" government interest. *See Citizens United v. FEC*, 558 U.S. 310, 340 (2010). Not only is there strict scrutiny, but election speech is already the apex of First Amendment protections. *See Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971) ("[I]t can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of *campaigns for political office*." (emphasis added)). While the First Amendment protections offered to issue advocacy may not be as strong as for election speech, there is reason to construe the Government's compelling interest in limiting foreign national political speech narrowly and as only applying to speech relating to the election of candidates (as explained in Part I *infra*). There are two other arguments to supplement this primary one. First, an undocumented person's intent to remain permanently in the United States may offer them additional protection as someone with

a long-term investment in the country's political future. Second, citizens and permanent residents may have First Amendment protections to hear such issue advocacy which could in turn transfer protection to the speaker.

I. THE GOVERNMENT'S INTEREST IN PROTECTING DEMOCRATIC SELF-GOVERNMENT

“[T]he United States has a compelling interest ... in limiting the participation of foreign citizens in activities of American democratic self-government, ... thereby preventing foreign influence over the U.S. political process.” *Bluman*, 800 F. Supp. 2d at 288. There is somewhat of a tension here because First Amendment protections are strongest in the realm of political speech, yet that is also where the Government has a compelling interest in limiting speech by non-citizen foreign nationals. Compare *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (“The First Amendment affords the broadest protection to such political expression in order ‘to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.’” (quoting *Roth v. United States*, 354 U.S. 476, 484 (1957))), and *Mills v. Alabama*, 384 U.S. 214, 218 (1966) (“[T]here is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs.”), with *Nyquist v. Mauclet*, 432 U.S. 1, 11 (1977) (“[A]n alien may be barred from full involvement in the political arena.”), and *Bluman*, 800 F. Supp. 2d at 287 (“[T]he Supreme Court has drawn a fairly clear line: The government may exclude foreign citizens from activities ‘intimately related to the process of democratic self-government.’” (quoting *Bernal v. Fainter*, 467 U.S. 216, 220 (1984))).

In short, there is a “political function” exception (typically used in Equal Protection cases) that, despite strong protections by the First Amendment, allows for the exclusion of non-citizens in the “formulation and implementation of self-government.” *Bernal*, 467 U.S. at 220–21. This exception stems from a founding principal of “political self-definition,” *Cabell v. Chavez-Salido*,

454 U.S. 432, 439 (1982), over which the state retains broad power to define. *See Sugarman v. Dougall*, 413 U.S. 634, 643 (1973). There is a parallel “special public interest” argument that states can restrict resources “to the advancement and profit of the members of the state,” and that *privileges* can be conditioned on citizenship. *See People v. Crane*, 214 N.Y. 154, 154, 161 (1915). Constitutional rights, however, do not depend on this right-privilege distinction. *See Sugarman*, 413 U.S. at 644.

In *Cabell*, the Supreme Court created a two-part test to determine whether a law falls within this “political function” exception. First, a law’s classification must “serve[] legitimate political ends.” Second, exceptions are limited to “‘persons holding state elective or important nonelective executive, legislative, and judicial positions,’ those officers who ‘participate directly in the formulation, execution, or review of broad public policy’ and hence ‘perform functions that go to the heart of representative government.’” *Cabell*, 454 U.S. at 439 (quoting *Sugarman*, 413 U.S. at 647). That is, the Government’s interest is in elections and *the people* representing democratic institutions and government, not issue advocacy. *See First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 790, 790 n. 29 (1978) (“The risk of corruption perceived in cases involving candidate elections ... simply is not present in a popular vote on a public issue. ... [D]irect participation of the people in a referendum, if anything, increases the need for ‘the widest possible dissemination of information.’” quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 266 (1964)).

This view matches the original understanding of the First Amendment. The Framers feared foreign influence from “individuals [who] had no basic investment in the well-being of the country” and intended that Congress have the authority to exclude foreign nationals from “electioneering”². *Citizens United*, 558 U.S. at 425, n. 51 (Stevens, J., concurring in part and

² Electioneering “[r]efers to a clearly identified candidate for ... office.” 11 C.F.R. § 100.29(a)(1) (2014).

dissenting in part) (emphasis added) (internal quotation marks omitted).³ For an issue advocacy prohibition to pass strict scrutiny, a reviewing court is likely to require more from the Government than an interest in protecting democracy generally (e.g. referenda and ballot initiatives, as opposed to elections) from foreign interference.

Neither the First Amendment protections offered to issue advocacy nor the Government's regulatory interest therein are as strong as in typical electioneering speech. *Cf. Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 678 (1990) (Stevens, J., concurring) (“[T]here is a vast difference between lobbying and debating public issues on the one hand, and political campaigns for election to public office on the other.”), *overruled on other grounds by Citizens United*, 558 U.S. 310. *But cf. VanNatta v. Keisling*, 151 F.3d 1215, 1224 (9th Cir. 1998) (Brunetti, J., dissenting) (conflating electioneering and issue advocacy: “[G]roups will be allowed to make independent expenditures in an effort to persuade the voters of Oregon that a particular candidate should be elected *or a particular issue* warrants closer attention.” (emphasis added)). Because it inherently does not relate to candidate elections, issue advocacy is not a “political function” as defined by the two-part *Cabell* test. The Government logically has less of a compelling interest in regulating this category of “lesser” speech because democratic self-government (meaning candidate elections) is not at stake. Issue discussion may not be prohibited merely because it might relate to an election, and debatable cases should be resolved in favor of speech protections. *See Wisconsin Right to Life*, 551 U.S. at 474, n. 7. Overcoming this inherent difference, will require tying issue advocacy generally to democratic self-determination.

³ While Justice Stevens was not in the *Citizens United* majority, then Judge Kavanaugh noted: “Justice Stevens's statement [is] a telling and accurate indicator of where the Supreme Court's jurisprudence stands on the question of foreign contributions and expenditures.” *Bluman*, 800 F. Supp. 2d at 289.

II. PERMANENCE OF THE SPEAKER

The McCain-Feingold exception for lawful permanent residents to engage in political speech stems from their “long-term stake in the flourishing of American society.” *Bluman*, 800 F. Supp. 2d at 291. Temporary foreign nationals, on the other hand, “by definition have only a short-term interest in the national community.” *Id.* And for these reasons, lawful permanent residents are more like American citizens than like temporary foreign nationals. *See id.* Citizens “belong[] to the polity and [are] entitled to participate in the processes of democratic decisionmaking.” *Foley v. Connelie*, 435 U.S. 291, 295 (1978). This analysis begs the question of whether undocumented people who, if given the chance, would become permanent residents or citizens (like many DREAMers), are more like these excepted lawful permanent residents (and thus like citizens) or more like temporary foreign nationals. Though in a public employment context, the Supreme Court has stressed permanence as a valid consideration when the Government infringes on the rights of non-citizens:

The restriction is carefully framed to serve its purpose, as it bars from teaching only those aliens who have demonstrated their unwillingness to obtain United States citizenship. ... [Appellees] prefer to retain citizenship in a foreign country with the obligations it entails of primary duty and loyalty. They have rejected the open invitation extended to qualify for eligibility to teach by applying for citizenship in this country.

Ambach v. Norwick, 441 U.S. 68, 80–81 (1979).

Analogizing to *Ambach* is complicated by the fact that in that case, petitioners were eligible for citizenship but refused it, clearly signaling their “primary duty and loyalty” to another nation. Here, it is more challenging to draw this inference from an undocumented noncitizen who may hope for citizenship or who knows only the United States as home (making it difficult to allege

loyalty to another country). While not in a political function exception case, a federal district judge has argued that “[w]hile [undocumented people] remain in the country[,] they should not be denied the right to speak or to listen.” *In re Alien Children Educ. Litig.*, 501 F. Supp. 544, 559 (S.D. Tex. 1980) (stressing the likelihood that such people will “remain here for years”), *aff’d sub nom. Plyler v. Doe*, 457 U.S. 202 (1982). This matches the original understanding of the First Amendment as discussed by Justice Stevens in *Citizens United*, then echoed by now Justice Kavanaugh in *Bluman* (see *supra* pp. 4–5). Undocumented people intent to remain in the United States likely have some “basic investment in the well-being of the country.” *Citizens United*, 558 U.S. at 425, n. 51 (Stevens, J., concurring in part and dissenting in part) (internal quotation marks omitted). Yet on the other hand, their undocumented status renders them inherently temporary residents because their status leaves them in a state of flux.

Stressing residency and permanence could be an important line of argument. Those wishing to uphold such a prohibition on foreign national issue advocacy will argue that there is a slippery slope in overturning it: overturning the prohibition could lead to vast amounts of issue advocacy spending by foreign corporations, particularly after *Citizens United* determined it is unconstitutional to prevent corporations from participating in electioneering. See *id.* at 343 (“The Court has thus rejected the argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not ‘natural persons.’” (quoting *Bellotti*, 435 U.S. at 776)). Cabining First Amendment protections to undocumented foreign nationals living in the United States may require emphasizing a desire for permanence and a stake in the long-term political future of the country, traits foreign corporations do not have.

III. FIRST AMENDMENT RIGHTS OF THE SPEECH RECIPIENT

Recipients of political speech also have First Amendment protections. *See Martin v. City of Struthers*, 319 U.S. 141, 143 (1943) (“[The First Amendment] necessarily protects the right to receive”). When there is a willing speaker, the First Amendment protects the communication, and can presumably be vindicated by both speaker and listener alike. *See Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 867 (1982) (“[T]he right to receive ideas follows ineluctably from the *sender’s* First Amendment right to send them.”); *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 756 (1976) (“[T]he protection afforded is to the communication, to its source and to its recipients both”). This protection does not outweigh the Government’s right to *prevent* the entry of a foreign national—*see Kleindienst v. Mandel*, 408 U.S. 753, 768–69 (1972)—but *Mandel* focused on those who have not yet entered the United States, meaning there may be a more robust right to hear foreign nationals already within the country (*see* discussion of *In re Alien Children*, *supra* p. 7).

IV. THE NATURE OF THE PROHIBITION

While not a First Amendment challenge, a statute can be challenged as unconstitutionally vague under the Fifth Amendment’s Due Process Clause. *See United States v. Williams*, 535 U.S. 285, 304 (2008) (“Vagueness doctrine is an outgrowth not of the First Amendment, but of the Due Process Clause of the Fifth Amendment.”). A statute violates Due Process if it “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.” *Id.* Those targeted by a statutory prohibition banning speech have a Constitutional right to know what they are proscribed from doing, though “perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity.” *Ward v. Rock Against Racism*, 491 U.S. 781, 794 (1989). Drafters

of legislation forbidding particular kinds of issue advocacy (paid online ads, for example) must be sure to adequately describe the nature of the prohibition or risk a vagueness challenge.

CONCLUSION

A potential case will turn on the Court's willingness to include issue advocacy in the political function exception. If it did so, the Government would then have a compelling interest in regulating speech by non-citizen foreign nationals. Prior cases suggest cabinining the political function exception to electioneering rather than mere issue speech, but it seems foreseeable that a judge might see self-government and political self-definition as more than just candidate elections. Issue advocacy relates to policy and politics, and there is a tenable argument, analogous to the one regarding electioneering, that such speech should be limited to those with a long-term interest in the country's political future. Even if there is a compelling Government interest generally, precedent has shown there to be a two-dimensional space shaping the contours of First Amendment political speech protections. On one axis, a person's permanence, defining Constitutional protections to engage in democratic self-government. All would argue citizens have a right to participate in American democracy; substantially fewer would argue weekend tourists do. Lawful permanent residents, a group somewhere between these extremes⁴, but are not granted complete access to the democratic process (the right to vote is withheld, for example). On the other axis, the nature of speech: a continuum ranging from pure electioneering, with a strong Government regulatory interest, to pure issue advocacy, likely with a less compelling interest.

DREAMers and those with temporary protected status can be fit into this model. Assuming their speech is pure issue advocacy, the question then becomes where to draw the line on the permanence axis: where those more permanent have a Constitutionally protected right to issue

⁴ See Part II, discussion of lawful permanent residents, *supra* p. 6.

advocacy, and those less permanent do not. All DACA recipients arrived in the United States prior to their sixteenth birthday⁵ – they have grown up in this country, and many do not even know another country as home. But while undocumented people may desire permanent status, without recognizing DREAMers’ heightened status along the permanence spectrum, it is difficult to argue they, legally, have a long-term stake in American politics. They are, by definition, not permanent residents. Those with temporary protected status have a more challenging argument. Their status is explicitly temporary.

Undocumented people without any recognized status have an even more difficult argument. For DREAMers and those with temporary protected status, the Government has recognized their ability to remain here, and there may be an implicit connection between this acknowledgement and a stake in the long-term political future of the country, an inference that would be unavailable for most undocumented immigrants. On the other hand, should a court adopt the view discussed in *In re Alien Children Educ. Litig.*, discussed *supra* p. 7, a likelihood that undocumented people will remain in the United States “for years” might be enough to warrant First Amendment political speech protection.

After *Citizens United*, foreign entities and foreign media also fall along this same permanence spectrum. Foreign businesses are impermanent fixtures within the United States. It is unclear whether they are considered within the United States at all. Thus, they would likely not have a Constitutional right to participate in American democracy. Though foreign entities, particularly foreign media companies, may have additional First Amendment protections, outside the scope of the right to democratic self-government, that protect their right to issue advocacy.

⁵ See Memorandum from Janet Napolitano, Sec’y of Homeland Sec. on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children to David V. Aguilar, Acting Comm’r, U.S. Customs and Border Prot., Alejandro Mayorkas, Dir., U.S. Citizenship and Immigration Servs., and John Morton, Dir., U.S. Immigration and Customs Enf’t (June 15, 2012).

Applicant Details

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BA/BS From **University of Southern California**
 Date of BA/BS **May 2009**
 JD/LLB From **Fordham University School of Law**
https://www.fordham.edu/info/29081/center_for_judicial_engagement_and_clerkships
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 Law Review/Journal **No**
 Moot Court Experience **No**

Bar Admission

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

The Honorable Lewis J. Liman
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March 16, 2022

Dear Judge Liman,

I am writing to apply for a clerkship in your chambers beginning August 1, 2024 and ending August 1, 2025. I am a 2015 graduate of Fordham University School of Law where I was a Stein Scholar and a member of the Brendan Moore Trial Advocacy Competition Team. Presently, I am clerking for Magistrate Judge Katharine H. Parker. Prior to that, I was a Special Assistant United States Attorney for the Eastern District of New York in the National Security and Cybercrime section.

Upon graduation from law school, I joined the National Security Division in the U.S. Department of Justice through the Attorney General Honors Program. During my four years with the Department, I was fortunate to practice in two Federal District Courts and in the Executive Office of the U.S. Department of Justice's National Security Division as Counsel to the Deputy Assistant Attorney General. My time with the U.S. Department of Justice coupled with my exposure to the legislative and executive branches via my internships at The White House, the U.S. Senate, the U.S. House of Representatives and the Senate Foreign Relations Committee allowed me to appreciate the complexities of criminal prosecutions.

As a Trial Attorney and a Special Assistant United States Attorney, I worked on national security cases, which are heavy in criminal enforcement, regulation, and punishment. Working alongside my counterterrorism partners made me fully appreciate the gravity of taking away a person's freedom or even life, but I believe a crucial experience that I need is to sit side-by-side with a member of the judiciary and absorb all of the wisdom they have to impart in criminal cases. Clerking with the Honorable Katharine H. Parker made me realize that my passions lie beyond national security work. I am seeking a clerkship that exposes me to more areas of the law with a focus on my writing and research. As your clerk, I would work tirelessly to help craft judgments, review sentencing's and research case law, and having my work reviewed by a thoughtful leader in the judicial system would be an incredible opportunity to improve as a lawyer.

Attached please find my resume, writing sample and transcript. In addition, I provide the following references:

1. Professor Karen J. Greenberg, Fordham University, (917) 861-8602;
2. Richard M. Tucker, Chief of the National Security and Cybercrime Section, U.S. Attorney's Office for the Eastern District of New York, (718) 254-6204;
3. Joseph Palazzo, Trial Attorney, U.S. Department of Justice, (202) 445-7910.

Thank you for your kind consideration of my candidacy.

Sincerely,

Jacqueline Barkett Chervak

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EDUCATION

Fordham University School of Law, Juris Doctor (GPA: 3.3) May 2015

Stein Scholar, Center for Public Interest, Head of Veterans Project
Archibald R. Murray Public Service Award Magna Cum Laude (2015)
Head Assistant to Director Karen Greenberg, Center for National Security Law
Georgetown White Collar Crime Competition Finalist, Brendan Moore Trial Advocacy Competitor

University of Southern California, Master's Degree, International Relations and Public Diplomacy May 2011

Thesis: Public Diplomacy and Counterinsurgency Operations in Afghanistan, Khost Province
Los Angeles World Affairs Council Member
Member of Association of Public Diplomacy Scholars
Honorary Speaker, Media and Terrorism Conference in Dublin, August 2010

University of Southern California, Bachelor of Arts, Communication, Minor in Mandarin Chinese May 2009

Dean's List Honors, USC Annenberg's School for Communication
Phi Sigma Theta Honor Society

LEGAL EXPERIENCE

The Honorable Katharine H. Parker, U.S. District Court for the Southern District of New York Apr. 2021 – Apr. 2022
Prospective Judicial Law Clerk

Federal Reserve Bank of New York, New York Feb. 2020 – Apr. 2021
Risk Analyst in the Financial Crimes Unit for Compliance/ Legal Group

- Investigated suspicious wire activity including money laundering, sanctions evasion and fraud.
- Wrote and researched country-specific reports (mostly based in the Middle East) regarding anti-money laundering policy and exchange houses in Arabic.
- Completed due diligence research using various databases (including World-Check, SARS, and Lexis Advance).
- Provided written and verbal reports on analysis and research related to the above.

U.S. Department of Justice

Special Assistant United States Attorney, U.S. Attorney's Office, Eastern District of New York Feb. 2018 – Dec. 2019

- Represented the United States in district court and grand jury.
- Examined witnesses in grand jury and in court; argued at sentencing, detention, and supervised release violation hearings; and presented cases for indictment. Prepared witnesses for trials and hearings.
- Conducted investigations and prosecutions of money laundering, wire fraud, sanctions-based violations, public corruption and terrorism, including obtaining search and arrest warrants, negotiating plea agreements, and drafting briefs for trials and motions.
- Led two filter review teams regarding visa fraud and terrorism investigations.

Counsel to the Deputy Assistant Attorney General, U.S. Department of Justice Nov. 2016 – Feb. 2018

- Counsel to the Deputy Assistant Attorney General For National Security overseeing the Counterterrorism and Counterespionage Sections within the National Security Division.
- Analyzed every search warrant, indictment, complaint, plea, and other pleading from the 94 U.S. Attorney's Offices who were investigating a subject of national security.
- Provided confidential, high-level legal and policy support for the NSD AAG and DAAG on complex and highly sensitive national security programs and coordinated meetings with our intelligence partners.
- Assembled and led a team to investigate cold cases.
- Prepared data for Congress regarding terrorism investigations.

Special Assistant United States Attorney, U.S. Attorney's Office, Washington, D.C. Apr. 2016 – Aug. 2019

- Completed twelve bench trials and managed over sixty cases in Superior Court.
- *United States v. Kassim Tajideen*, member of the trial team on a complex IEEPA, wire fraud and money laundering case where I drafted motions, wrote prosecution memos, questioned multiple witnesses in the grand jury, reviewed extensive discovery of over three million documents, traveled internationally for proffers, coordinated with law enforcement domestically and internationally, participated in court hearings, and interviewed witnesses in Arabic.

Trial Attorney, U.S. Department of Justice, National Security Division

Sept. 2015 – Apr. 2016

- Attorney General's Honors Program in the National Security Division's Counterterrorism Section.
- Reviewed complaints, indictments, plea offers and classified information with our intelligence partners.
- Wrote briefs for court filings and assisted AUSA's with investigation.

LEGAL INTERNSHIPS

U.S. Department of Justice

Legal Intern, National Security Division

Summer 2014

- Wrote memo about the standard of review for appellate courts review of FISC rulings for an Eighth Circuit appeal.
- Drafted monographs on juvenile cases and electronic searches at the border.
- Managed hostage cases in Syria, Lebanon and Iraq.

Legal Intern, U.S. Attorney's Office, Eastern District of New York

Spring 2014

- Worked in the Civil Division, Human Rights Section.
- Research and assisted in cases regarding retaliation claims and economic fraud.

Legal Intern, U.S. Attorney's Office, Southern District of New York

Summer 2013

- Criminal Division intern in the General Crimes and International Narcotics and Terrorism Section.
- Assisted in a narcotics trial; Reviewed Arabic interrogation videos; Drafted reply to a Bill of Particulars.

POLICY EXPERIENCE

Carnegie Endowment for International Peace Middle East Center, *Intern*, Beirut, Lebanon

Jan. 2012 – Aug. 2012

- Wrote, edited and sourced papers on the Syrian crisis for government agencies.
- Planned an international conference in coordination with TESEV in Istanbul, Turkey for Middle East leaders and officials.
- Attended the Arab League Summit in Iraq.
- Worked with media counterparts to develop stories about Lebanon vis-à-vis the Syrian crisis.

U.S. Department of State, *Political Affairs Intern*, Rome, Italy

May 2011 – Nov. 2011

- Worked at the U.S. Embassy in Rome Italy with the U.S. Mission to the United Nations Food Agencies.
- Drafted and edited speeches for the Ambassador to the United Nations Food Agencies for speaking engagements.
- Created and implemented a social media scheme for the U.S. Mission to provide aid for the Horn of Africa famine.
- Delegate to the U.S. Mission to the U.N. for the election of the new Director-General of the Food and Agriculture Organization (FAO).

Center For Public Diplomacy, *Research Assistant*, University of Southern California

Aug. 2010 – May 2011

- Researched Public Diplomacy of Non-State Actors in the Muslim World: Hezbollah, Hamas and Al Qaeda for Dr. Lina Khatib, Director of Stanford University's Arab Reform and Democracy Program.
- Analyzed national media websites and blogs in Arabic; drafted reports and researched summaries relating actions of non-state actors to broader communication theory.
- Recognized in Lina Khatib's book, *Image Politics in the Middle East*.

The White House, *Office of Presidential Correspondence Intern*

May 2010 – Aug. 2010

- Developed and implemented a new organizational and logistical system to respond to mail backlog; led a team that recruited and managed volunteers.
- Managed departmental operations, response customization, data entry, daily reporting and quality control.

Project Concern International, *Board Member and Volunteer*, Lusaka, Zambia

July 2009

- Led community-level interventions with KidSafe, collaborated with local schools, and facilitated focus groups with volunteers to evaluate effectiveness; generated training materials for women to learn micro-financing.
- Hosted classes informing people about public health sanitation education pertaining to HIV/AIDS.

AWARDS

- Criminal Division Assistant Attorney General's Award for Distinguished Service December 2019
 - Awarded to recognize superior performance to the Criminal Division in *United States v. Kassim Tajideen*.
- Award from the Federal Bureau of Investigation's New York Joint Terrorism Task Force July 2019
 - For the successful prosecution of Mohammed Naji during Operation Fare Game.

ACTIVITIES & INTERESTS: Extensive travel (76 Countries); Certified Falcon Hunter (Trained in Ireland); Order of Malta
LANGUAGES: Proficient in Arabic
CLEARANCE: Top Secret / SCI

Jacqueline Barkett
Fordham University School of Law
Cumulative GPA: 3.3

Fall 2012

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Criminal Law	Abner S. Greene	B-	3.00	
Legal Writing/ Research	Ellen L. Frye	In Progress (2 semesters)	2.00	
Property 9	Sonia Katyal	B	5.00	
Torts 9 & 10	Benjamin C. Zipursky	B-	5.00	

Spring 2013

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Procedure 9 & 10	Martin S. Flaherty	B+	5.00	
Clinical Externship: Stein Scholars	Andrew Chapin	A-	1.00	
Contracts	Adjunct Professor	B+	5.00	
Legal Writing & Research	Ellen L. Frye	B	3.00	
Legislation & Regulation	James J. Brudney	B	3.00	

Fall 2013

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Law	Tracy Higgins	B	4.00	
International Law	Martin S. Flaherty	A-	4.00	
Professional Responsibility: Lawyers and Justice	Russell Pierce	A	3.00	
Refugee Law and Policy	Stephen T. Poellot	A-	2.00	
Terrorism and 21st Century Law	Karen Greenberg	A	2.00	

Spring 2014

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Adv. National Security & Foreign Relations	Andrew Kent	A	2.00	
Clinical Externship: Civil Fieldwork	Bruce Green	Pass	2.00	
Clinical Externship: Civil Seminar	Sherri Levine	A-	1.00	
Corporations	Jeffrey Colon	B	4.00	
Public Interest Lawyer Advanced Seminar	Russell Pierce	A	4.00	
Trial Advocacy Competition Team	James Kainen	Pass	3.00	

Fall 2014

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Conflict of Laws	Marc Arkin	A-	3.00	
Congressional Investigations	Raphael Prober	B	2.00	
Criminal Procedure: Investigative	Ethan Greenberg	B+	3.00	
Federal Courts	Thomas H. Lee	B-	3.00	
Islamic Law and Global Security	Adjunct Professor	A+	2.00	

Spring 2015

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Advanced Legal Research: NY Laws	Adjunct Professor	B+	1.00	
Evidence	James Kainen	C+	4.00	
Fundamentals of New York Law	Adjunct Professor	B	2.00	
International Financial Crime	Gerald Manweh	A-	2.00	
Law and Economics	John Pfaff	A	3.00	

Grading System Description

Grade Scale for the Juris Doctor (J.D.)

Prior to Fall 2014:

Grade Quality Points

A+ 4.30

A 4.00

A- 3.70

B+ 3.30

B 3.00

B- 2.70

C+ 2.30

Effective Fall 2014

Grade Quality Points

A+ 4.333

A 4.000

A- 3.667

B+ 3.333

B 3.000

B- 2.667

C+ 2.333

Fordham Law School does not calculate class rankings.

Jacqueline Barkett
University of Southern California
Cumulative GPA: 3.3

Fall 2007

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Chinese III		P	4.0	
Communication as a Liberal Art		B+	4.0	
Deepwater Cruising		B	2.0	
Earthquakes		B-	4.0	
Introduction to Mass Communication Theory and Research		B	4.0	

Spring 2008

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Advanced Writing		C+	4.0	
Communication and Social Sciences		A-	4.0	
East Asian Societies		B	4.0	
International Relations		C	4.0	

I was out of class quite a bit this semester because my roommate and cousin was diagnosed with ovarian cancer and could not return to school.

Summer 2008

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Comparative Media In Europe		A-	4.0	
Special Topics (Applied Communication Studies in Global Media)		A-	2.0	

Fall 2008

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Communication and Social Movements		A	4.0	
Media and Society		B+	4.0	
Philosophical Foundations of Modern Western Culture		P	4.0	
Research Practicum		P	2.0	
Sports, Communication and Culture		B+	4.0	

Spring 2009

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
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Argumentation and Advocacy	A-	4.0
Communication and Culture	B	4.0
Directed Research	A	2.0
Gender in Media Industries and Products	B	4.0
Studies in Arts and Letters	A-	4.0

Grading System Description

The following grades are used: A, excellent; B, good; C, fair in undergraduate courses and minimum passing in courses for graduate credit; D, minimum passing in undergraduate courses; and F, failed. Additional grades include CR, credit; NC, no credit; P, pass; and NP, no pass.

The following marks are also used: W, withdrawn; IP, in progress; UW, unofficial withdrawal; MG, missing grade; IN, incomplete; and IX, lapsed incomplete.

GRADE POINT AVERAGE (GPA) CATEGORIES/CLASS LEVEL

A system of grade points is used to determine a student's grade point average. Grade points are assigned to grades as follows for each unit in the credit value of a course: A, 4.0 points; A-, 3.7 points; B+, 3.3 points; B, 3.0 points; B-, 2.7 points; C+, 2.3 points; C, 2.0 points; C-, 1.7 points; D+, 1.3 points; D, 1.0 point; D-, 0.7 points; F, 0 points; UW, 0 points; and IX, 0 points. Marks of CR, NC, P, NP, W, IP, MG and IN do not affect a student's grade point average.

There are four categories of class level and GPA: Undergraduate, Graduate, Law, and Other. UNDERGRADUATE is comprised of freshman (less than 32 units earned), Sophomore (32 to 63.9 units earned), Junior (64 to 95.9 units earned) and Senior (at least 96 units earned). GRADUATE is comprised of any coursework attempted while pursuing a master's and/or doctoral degree. LAW is comprised of any coursework attempted while pursuing a Juris Doctor or Master of Laws degree.

OTHER is comprised of any coursework attempted while not admitted to a degree program or coursework not available for degree credit.

Jacqueline Barkett
University of Southern California
Cumulative GPA: 3.7

Fall 2009

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Conflict and Cooperation		B	4.0	
Global Issues and Public Diplomacy		A	4.0	
Historical and Comparative Approaches to Public Diplomacy		A-	4.0	

Spring 2010

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Cultural Diplomacy		A	4.0	
Hard Power, Soft Power and Smart Power		A-	4.0	
Media and Politics		A-	4.0	

Fall 2010

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Communication for International Development		A	4.0	
Field Study		A	1.0	
News Media and the Foreign Policy Press		B+	4.0	
Theories of Diplomacy		A-	4.0	

Spring 2011

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
International Relations of the Middle East		B	4.0	
Practicum in Public Diplomacy Research		CR	4.0	
Special Topics (Public Diplomacy Evaluation)		A	4.0	

Grading System Description

The following grades are used: A, excellent; B, good; C, fair in undergraduate courses and minimum passing in courses for graduate credit; D, minimum passing in undergraduate courses; and F, failed.

Additional grades include CR, credit; NC, no credit; P, pass; and NP, no pass.

The following marks are also used: W, withdrawn; IP, in progress; UW, unofficial withdrawal; MG, missing grade; IN, incomplete; and IX, lapsed incomplete.

GRADE POINT AVERAGE (GPA) CATEGORIES/CLASS LEVEL

A system of grade points is used to determine a student's grade point average. Grade points are assigned to grades as follows for each unit in the credit value of a course: A, 4.0 points; A-, 3.7 points; B+, 3.3 points; B, 3.0 points; B-, 2.7 points; C+, 2.3 points; C, 2.0 points; C-, 1.7 points; D+, 1.3 points; D, 1.0 point; D-, 0.7 points; F, 0 points; UW, 0 points; and IX, 0 points. Marks of CR, NC, P, NP, W, IP, MG and IN do not affect a student's grade point average.

There are four categories of class level and GPA: Undergraduate, Graduate, Law, and Other. UNDERGRADUATE is comprised of freshman (less than 32 units earned), Sophomore (32 to 63.9 units earned). Junior (64 to 95.9 units earned) and Senior (at least 96 units earned).

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OTHER is comprised of any coursework attempted while not admitted to a degree program or coursework not available for degree credit.

U.S. Department of Justice

United States Attorney
Eastern District of New York

271 Cadman Plaza East
Brooklyn, New York 11201

March 16, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I write to recommend Jacqueline Barkett for a clerkship position in your chambers. I'm confident that Jackie's passion for the law and her desire to grow and learn as a young attorney will make her a valuable asset to you.

By way of background, I am Chief of the National Security & Cybercrime Section at the U.S. Attorney's Office in the Eastern District of New York ("EDNY"). I have been an Assistant United States Attorney since 2009. Prior to that, I was an associate attorney at Cravath, Swaine & Moore LLP and a law clerk for the Honorable Naomi Reice Buchwald in the Southern District of New York.

As I am sure you are aware, Jackie joined the Department of Justice as an attorney in 2015 through the Attorney General's Honors Program and has worked in the National Security Division since that time. Jackie has been detailed to EDNY for the past two years, serving both as a trial attorney in the Counterterrorism Section and as a Special Assistant United States Attorney supporting EDNY's national security practice. In that capacity, I've had the opportunity to oversee Jackie's work on several matters, and she has impressed me with both her poise and her ability to navigate the complicated and often challenging bureaucracy of the Department of Justice.

Jackie's most distinctive characteristics are her enthusiasm and positive attitude. She routinely volunteers to take on additional work, and she's been extremely valuable supporting EDNY AUSAs on a variety of our most important counterterrorism matters – all while continuing to manage a full Counterterrorism Section caseload. She has sought out opportunities to expand her skills, whether by tenaciously cultivating nascent investigations or by seeking formal and informal training from myself and other experienced prosecutors in our section. She is entrepreneurial, but at the same time has demonstrated sound judgment in knowing when she needs help and supervisory guidance.

Jackie has an easy-going personality and gets along well with others. She is extremely well liked at EDNY, and has made many friends in the Section. She also works well with our partners in the FBI and the Intelligence Community, deftly navigating what can periodically be prickly relationships. Agents like working with her, and she has been helpful at defusing problems on several occasions.

While we have come to value her as a crucial liaison to the National Security Division, I believe that Jackie would benefit enormously from the learning opportunities that a clerkship would afford. I hope you will seriously consider her. And if you would like to discuss her further, please do not hesitate to contact me.

Sincerely,

Richard M. Tucker
Assistant United States Attorney

Richard M. Tucker - RTucker@usa.doj.gov - (718) 254-6204

**Fordham University School of Law
150 West 62nd Street
New York, NY 10023**

March 16, 2022

The Honorable Lewis Liman
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 701
New York, NY 10007-1312

Dear Judge Liman:

I am writing to highly recommend Jacqueline Barkett for a clerkship. Jacqueline was my student at Fordham Law during which time she also served as my research assistant. As Jacqueline went on to work as a lawyer in the Honors Program at DoJ and then in the National Security Division at DoJ, she has stayed in touch. She is currently a Fellow at the Center on National Security, which I direct, and oversees our Law and Policy Books Program, a series of public events that focus on newly published books by former officials and policy makers in the area of law and security.

Jacqueline is a star. She has a genuine passion for the law, an acute intellect, a breadth of knowledge, and a talent for both writing and speaking. Her work has been consistently excellent. Jacqueline tackles questions with an intellectual energy that enables her to focus completely on the questions in front of her with a relentless and thoughtful dedication. At times, as at some moot arguments, I have seen her bring to bear aspects of the law that elude others, providing helpful, sometimes groundbreaking avenues for thought and argument.

Jacqueline's research and writing abilities are top-notch. I relied consistently over the years on the quality of her legal research for my own publications. She takes the initiative to research with a diligence that attends to breadth as well as depth, never losing sight of the question in front of her. She writes exceptionally well; her style is clear, intelligent and well-reasoned. Moreover, she is always thoughtful, be it in her writing, her speaking, or her reflections on the work or thought of others.

Since she graduated from Fordham Law, Jacqueline has worked in several capacities in Main Justice and the National Security Division. They have learned to rely on her for a strong commitment to the work at hand, and an exceptional eye for the most productive avenues of research.

Jacqueline is accomplished in many ways. She interned in Beirut, Rome and the White House. She is proficient in Arabic, and acquainted with Mandarin. She has spent time traveling and volunteering in Africa.

In addition to her demonstrated commitment to her work, Jacqueline keeps steadily abreast of contemporary writing and analysis. She is engaged with the larger intellectual trends of the day in a way that infuses the depth and clarity of her research and writing.

This letter of recommendation would not be complete without mention of Jacqueline's demeanor. She is an absolute pleasure to work with. She is sophisticated and mature, adept at complex issues, open to guidance, and works well with her peers.

In my estimation, Jacqueline has a distinguished career ahead of her. She has my highest recommendation without reservation.

Sincerely,

Karen J. Greenberg, Ph.D.
Director
Center on National Security
Fordham Law School

Karen Greenberg - greenbergkarenj@gmail.com - 6462933929